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# Supreme Court of the United States

OCTOBER TERM, 1939.

**No. 92.**

JOHN E. MADDEN, JR., Executor of the Estate of John E. Madden, Deceased, - - - - - Appellant,

*versus*

COMMONWEALTH OF KENTUCKY, by James W. Martin, Commissioner of Revenue of the Commonwealth of Kentucky, - - - - - Appellee.

## BRIEF FOR COMMONWEALTH OF KENTUCKY, BY JAMES W. MARTIN, COMMISSIONER OF REVENUE OF THE COMMONWEALTH OF KENTUCKY.

The Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation. Increased revenue—impossibility of evasion—facility of collection—a substantial contribution to the public welfare—complete uniformity—support the classification here attacked.

CLIFFORD E. SMITH,
SAMUEL M. ROSENSTEIN,
JOSEPH J. LEARY,
CLYDE E. REED,
*Counsel for Appellee.*

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

## SUBJECT INDEX.


PAGE

STATEMENT ..... 1– 9

Commonwealth v. Madden's Executor, 265 Ky. 684 ..... 2

Section 4052, Carroll's Kentucky Statutes, Baldwin's 1930 Revision (Kentucky Acts 1918, c. 11, p. 31) ..... 3

Kentucky Constitution, Section 171, as originally written ..... 5

Report of Tax Commission, 1908-1909 ..... 5

House Resolution #24 of the General Assembly of 1912 ..... 6

Report of Special Tax Commission of 1912-1914 ..... 6

Senate Journal of 1917—pages 14 and 15 (Appendix, page 65) ..... 9

**(a) The Statutes of Kentucky Which Are Here Challenged** ..... 10–18

Section 4019a-10, Carroll's Kentucky Statutes, Baldwin's 1930 Revision (Kentucky Acts—1917, c. 11, p. 44—Amended by Kentucky Acts, 1924, c. 116, p. 407) .. 10

Section 4019, Carroll's Kentucky Statutes, Baldwin's 1930 Revision (Kentucky Acts—1917, c. 11, p. 44—Amended by Kentucky Acts, 1924, c. 116, p. 403, as reenacted in Kentucky Acts, 1926, c. 164, p. 739) ..... 10

Section 4019a-1, 2, 3 and 4, Carroll's Kentucky Statutes, Baldwin's 1930 Revision (Kentucky Acts—1917, c. 4, p. 27—Amended by Kentucky Acts, 1924, c. 116, p. 402) ..... 11, 12, 13, 14

PAGE

**(1) Legislative History of Statutes Here Challenged** . . . . . 14–15

House Journal of 1917, pages 14, 28, 39, 49, 59, 65, 269, 271-278, 590, 630, 675, 719, 720 . . . . . 14

Senate Journal of 1917, pages 104, 174-175, 269, 270, 297, 298 and 338 . . . . . 15

Stebbins v. Riley, 268 U. S. 137, 143 . . . . . 15

Louisville Gas & Electric Company v. Coleman, 277 U. S. 32 . . . . . 15

**(2) Statistics Showing Accomplishment of Objectives** . . . . . 15–18

Bulletin of Bureau of Business Research of the College of Commerce of University of Kentucky, June, 1929, Volume 1, No. 1 . . . . . 15, 16

Report of Comptroller of Currency, Volume 1 . . . . . 16

Table 14 of Bulletin of Bureau of Business Research of College of Commerce, supra (Appendix, page 70) . . . . . 18

**ARGUMENT** . . . . . 18–61

**(a) Appellant's Contentions** . . . . . 18–19

Section 171, Constitution of Kentucky as amended . . . . . 19

Williams v. City of Bowling Green, 254 Ky. 11 . . . . . 19

**(b) The State Has a Broad Discretion in the Classifying of Property for Taxation** . . . . . 19–27

Lawrence v. State Tax Commission of the State of Mississippi, 286 U. S. 276 . . . . . 19, 20

New York Rapid Transit Corporation v. New York, 303 U. S. 573 . . . . . 20, 23

Clement National Bank v. Vermont, 231 U. S. 120 . . . . . 26

PAGE

**(c) Facility of Collection** . . . . . 27–35

Watson, et al., v. State Comptroller of New York, 254 U. S. 122 . . . . . 30
Carmichael v. Southern Coal & Coke Company, 301 U. S. 495 . . . . . 31, 32
People of the State of New York Ex Rel Hatch v. Reardon, 204 U. S. 152 . . . . . 33
Otis & Grasman v. Parker, 187 U. S. 606 . . . . 33
New York Rapid Transit Company v. New York, supra . . . . . 35

**(d) Promotion of the General Welfare** . . . . . 35–47

Carmichael v. Southern Coal & Coke Company, supra . . . . . 37
Rast v. Van Deman & Lewis Company, 240 U. S. 342 . . . . . 37
Clarke v. Deckebach, 274 U. S. 392 . . . . . 37
Stebbins, et al., v. Riley, State Controller, 268 U. S. 137 . . . . . 37
New York Rapid Transit Company v. New York, supra . . . . . 37
People of the State of New York v. Roberts, 171 U. S. 658 . . . . . 38
Colgate v. Harvey, 296 U. S. 404 . . . . . 38
Citizens Telephone Company v. Fuller, 229 U. S. 322 . . . . . 39
Merchants and Manufacturers Bank v. Pennsylvania, 167 U. S. 461 . . . . . 39
Rast v. Van Deman & Lewis Company, supra. 40
American Sugar Refining Company v. Louisiana, 179 U. S. 89 . . . . . 40
Metropolis Theatre Company v. Chicago, 228 U. S. 61 . . . . . 40
Aero Mayflower Transit Company v. Georgia Public Service Commission, 295 U. S. 285. 41
A. Magnano Company v. Hamilton, 292 U. S. 40 . . . . . 42
Alaska Fish Salting & By-Products Company v. Smith, 255 U. S. 44 . . . . . 42

PAGE

Southwestern Oil Co. v. Texas, 217 U. S. 114. 43
Armour & Company v. Virginia, 246 U. S. 1.. 45
People of the State of New York v. Roberts, supra .. .... 46
Connecticut General Life Insurance Company v. Johnson, 303 U. S. 77..... 47

**(e) Appellant's Contention Not Sustained by Colgate v. Harvey** .....47–53

Colgate v. Harvey, supra ..... 47
Reynolds Metal Company v. Martin, 269 Ky. 378 . . ..... 50
Commonwealth v. Madden's Executor, supra. 51
Metropolis Theatre Company v. Chicago, supra . . ..... 52

**(f) Kentucky's System of Taxing Property for Ad Valorem Purposes Does Not Abridge Any Privilege or Immunity Guaranteed to Appellant by the Fourteenth Amendment** .....53–61

Bell's Gap Railroad Company v. Pennsylvania, 134 U. S. 232 ..... 54
Prudential Insurance Company of America v. Cheek, 259 U. S. 530..... 54
Slaughter House Cases, 16 Wall. 36.....55, 57
Corfield v. Coryell, 4 Wash. CC. 371, Fed. Cas. No. 3, 230 . ..... 56
Twining v. State of New Jersey, 211 U. S. 78 . . ..... 57
Williams v. Fears, 179 U. S. 270..... 58

**CONCLUSION** . . .....61–63

**APPENDIX** . . .....65–70

Address of Governor A. O. Stanley—Senate Journal of 1917, pages 13 to 18..... 65

Table 14 of Bulletin Bureau of Business Research College of Commerce, University of Kentucky, Volume 1, June, 1929, No. 1..... 70

## TABLE OF CASES.


PAGE

Aero Mayflower Transit Company v. Georgia, 295 U. S. 285 . . . . . 41
A. Magnano Company v. Hamilton, 292 U. S. 40 . . . . . 42
Alaska Fish Salting & By-Products Company v. Smith, 255 U. S. 44 . . . . . 42
American Sugar Refining Co. v. Louisiana, 179 U. S. 89 . . . . . 40
Armour & Company v. Virginia, 246 U. S. 1 . . . . . 45
Bell's Gap Railroad v. Pennsylvania, 134 U. S. 232 . . . . 54
Carmichael v. Southern Coal & Coke Co., 301 U. S. 495 31, 32, 37
Citizens Telephone Co. v. Fuller, 229 U. S. 322 . . . . . 39
Clarke v. Deckebach, 274 U. S. 392 . . . . . 37
Clement National Bank v. Vermont, 231 U. S. 120 . . . . 26
Colgate v. Harvey, 296 U. S. 404 . . . . . 38, 47, 59, 60
Commonwealth v. Madden's Executor, 265 Ky. 684 . . 2, 51
Connecticut General Life Insurance Co. v. Johnson, 303 U. S. 77 . . . . . 47
Corfield v. Coryell, 4 Wash. CC. 371, Fed. Cases, No. 3, 230 . . . . . 56
Lawrence v. State Tax Commission of State of Miss., 286 U. S. 276 . . . . . 19, 20
Louisville Gas & Electric Co. v. Coleman, 277 U. S. 32 . . . . . 15
Merchants & Manufacturers Bank v. Pennsylvania, 167 U. S. 461 . . . . . 39
Metropolis Theatre v. Chicago, 228 U. S. 61 . . . . . 40, 52
New York Rapid Transit Co. v. New York, 303 U. S. 576 . . . . . 20, 23, 35, 37
Otis & Grasman v. Parker, 187 U. S. 606 . . . . . 33
People of State of New York, ex rel. Hatch v. Reardon 204 U. S. 152 . . . . . 33, 38
Prudential Ins. Co. of America v. Cheek, 259 U. S. 530 54

PAGE

Rast v. Van Deman & Lewis Co., 240 U. S. 342.....37, 40
Reynolds Metal Co. v. Martin, 269 Ky. 378..... 50

Slaughter House Cases, 16 Wall. 36.....55, 57
Southwestern Oil Co. v. Texas, 217 U. S. 114..... 43
State v. Roberts, 171 U. S. 658..... 46
Stebbins v. Riley, 268 U. S. 137.....15, 37

Twining v. State of N. J., 211 U. S. 78..... 57

Watson, et al., v. State Comptroller of New York, 254 U. S. 122..... 30
Williams v. City of Bowling Green, 254 Ky. 11..... 19
Williams v. Fears, 179 U. S. 270..... 58

STATUTES.

Carroll's Kentucky Statutes, Baldwin's Revision, 1930,

Section 4019 (Ky. Acts, 1917, c. 11, p. 44, amended by Ky. Acts, 1924, c. 116, p. 403, as re-enacted in Ky. Acts, 1926, c. 164, p. 739)..... 10

Section 4019a-1, 2, 3 and 4 (Ky. Acts, 1917, c. 4, p. 27, amended by Ky. Acts, 1924, c. 116, p. 402).....11, 12, 13, 14

Section 4019a-10 (Ky. Acts, 1917, c. 11, p. 44, amended by Ky. Acts, 1924, c. 116, p. 407)..... 10

Section 4052 (Ky. Acts, 1918, c. 11, p. 31)..... 3

House Resolution #24 of the General Assembly of 1912. 6

REPORTS.

Bulletin of Bureau of Business Research of College of Commerce, June, 1929, Vol. 1, No. 1.....15, 16

Report of Comptroller of Currency, Vol. 1, No. 1.... 16

Report of Tax Commission of 1908-1909..... 5

Report of Tax Commission of 1912-1914..... 6

KENTUCKY SENATE AND HOUSE JOURNAL.

PAGE

Address of Governor A. O. Stanley before General Assembly of 1917 (Senate Journal of 1917, pages 13-18). . . . . 9

House Journal of 1917, pages 14, 28, 39, 49, 59, 65, 269, 271-278, 590, 630, 675, 719 and 720. . . . . 14

Senate Journal of 1917, pages 104, 174-175, 269, 270, 297, 298 and 338 . . . . . 9, 15

APPENDIX.

Address of Governor A. O. Stanley before General Assembly of 1917 (Senate Journal of 1917, pages 13-18). . . . . 65

Table of Assessment of Bank Deposits in Kentucky between 1916 and 1927, both inclusive. . . . . 70

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JOHN E. MADDEN, JR., EXECUTOR OF THE ESTATE OF JOHN E. MADDEN, DECEASED, *Appellant*,

*v.*

COMMONWEALTH OF KENTUCKY, BY JAMES W. MARTIN, COMMISSIONER OF REVENUE OF THE COMMONWEALTH OF KENTUCKY, - *Appellee.*

---

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

---

## BRIEF FOR APPELLEE.

---

*May it please the Court:*

### STATEMENT.

The question presented on this appeal is whether Kentucky in the exercise of its power to classify property for taxation is authorized to provide that money on deposit in banks doing business in Kentucky, subject to assessment in Kentucky, shall be taxed at the rate of ten cents (10c) upon each One Hundred Dollars valuation (the tax report and payment being made

by the bank as agent for the depositor and with authority being given the bank to charge this tax payment against the depositor) and to provide by other statutes that all other intangible property, including credits, subject to assessment in Kentucky, due from either resident or non-resident debtors shall be placed in a separate class and taxed at the rate of fifty (50c) cents upon each One Hundred Dollars valuation. (This class of property is required to be assessed by the taxpayer.) This classification was sustained by the Court of Appeals of Kentucky. (See Commonwealth v. Madden's Executor, 265 Ky. 684, 97 S. W. (2d) 561. Transcript of Record, 54-61.)

John E. Madden, now deceased, was at all times between July 1, 1924, and July 1, 1929, both inclusive, a resident of Kentucky (Transcript of Record, page 1). In addition to various holdings in real estate, tangible and intangible property, he had on deposit in New York banks money in the following amounts:

| | |
|---|---|
| 1924 | |
| Title Guarantee & Trust Company, deposit | $ 100.00 |
| National City Bank, deposit | 63,895.00 |
| 1925 | |
| Title Guarantee & Trust Company, deposit | 56,100.00 |
| 1926 | |
| The Bank of Manhattan Company, deposit | 7,200.00 |
| Title Guarantee & Trust Company, deposited | 43,700.00 |
| The National City Bank, deposit | 49,000.00 |
| 1927 | |
| Title Guarantee & Trust Company, deposit | 2,800.00 |
| The National City Bank, deposit | 56,100.00 |

1928

| | |
|---|---|
| Title Guarantee & Trust Company, deposit | $34,400.00 |
| The National City Bank, deposit | 5,600.00 |

1929

| | |
|---|---|
| Title Guarantee & Trust Company, deposit | 10,900.00 |
| The Bank of Manhattan Company, deposit | 26,000.00 |
| The National City Bank, deposit | 21,200.00 |

(Transcript of Record, pages 20-24, 39-40, 49, 70, 71.)

The date for assessing personal property subject to taxation in Kentucky is July 1st of each year (Carroll's Kentucky Statutes, Section 4052, Baldwin's 1930 Revision, Section 42, being Chapter 11, page 31, Section 6 of the Acts of the General Assembly of 1918). At no time during the life of Mr. Madden did he DISCLOSE OR REPORT TO THE COMMONWEALTH OF KENTUCKY THE EXISTENCE OF THESE BANK DEPOSITS IN NEW YORK BANKS.

Mr. Madden died in November, 1929, and his will was probated in the county of his residence, Fayette County, Kentucky (Transcript of Record, page 1). In connection with the administration of his estate inventories and inheritance tax reports were required to be filed *and it was then for the first time that the taxing authorities of Kentucky learned that there had been a substantial omission of property from taxation by Mr. Madden by reason of his failure to list the same during his lifetime.* An action was then instituted in the Fayette County Court to assess these bank deposits and other intangible property for taxation. Since this appeal concerns only the bank deposits we shall not detail the other items of property that were also involved in the assessment action.

During the years 1924 to 1928, both inclusive, all intangible personal property subject to taxation in Kentucky was taxed at the rate of 50c upon each $100.00 of the value of such property; however, the Legislature provided that two classes of intangible property should be taxed at a different rate, one of these classes being money on deposit in any bank, trust company, or combined bank and trust company organized under the laws of this State or in any national bank of this State. The rate for such bank deposits was fixed at 1/10th of 1% upon the amount of such deposits. The second exception to the general intangible property rate was with reference to building and loan associations, with which we are not concerned on this appeal.

The entire tax structure of Kentucky was revised in 1917 by a special session of the General Assembly of Kentucky in order to remedy an intolerable system of taxation which had existed for many years. The comprehensive tax program which was adopted that year represented the result of approximately ten years of study by outstanding citizens of Kentucky working in conjunction with the taxing authorities and tax experts in other States. The situation confronting the taxing authorities and which was attempted to be remedied by an overhauling of the tax laws in 1917 was that a substantial amount of property, the bulk of which was intangible property, was going tax free due to the fact that the high rates then in force and effect was driving this type of property into concealment. Real estate and tangible personal property were carry-

ing the tax load. The tax legislation of 1917 was designed for the purpose of equalizing the burden and to make the tax rates so reasonable and just that the owners of property would report and assess it for taxation.

The reason why Kentucky found herself in the position of having a large amount of her property concealed from taxation was due to the unfortunate inclusion in the Kentucky Constitution of 1891 of Section 171 which provided in substance that *"all property, unless specifically exempted, regardless of its kind or of its ownership, must be assessed and taxed in the same manner and on the basis of its actual value in money."* Not only did the State tax all property at the same rate but the cities, counties and school districts also imposed their respective rates of taxation on all property and the State was powerless to exempt from local taxation various kinds of property. The injustice of this system becomes readily apparent.

As early as 1908 Governor Augustus E. Wilson, Chief Executive of the Commonwealth of Kentucky, recognized the injustice and impracticability of the general property tax system then prevailing in Kentucky and appointed a special tax commission who made a written report designated as "Report of Tax Commission, 1908-1909," in which it was recommended that Section 171 of the Constitution be amended in order that the Legislature should have the power to divide property into classes for purposes of taxation,—to impose taxes upon each classification of property—and to determine what class or classes of property

should be subject to local taxation. In the course of that report it was pointed out that many citizens of Kentucky who were willing to contribute their fair share of the cost of government would not assess their holdings because of the high rates resulting from taxation by the State, county, city and school districts.

The General Assembly in 1912 adopted House Resolution 24 calling upon the Governor to appoint a special tax commission to further investigate the revenue situation and to recommend proper changes. This commission was promptly appointed by the Governor and made an extensive investigation during the years 1912 and 1913. It filed a written report designated as a "Report of the Special Tax Commission of the State of Kentucky of 1912-1914" in which it too recommended the urgent need of an amendment to Section 171 of the Kentucky Constitution.

Afer a full consideration of the matter the General Assembly of Kentucky at its regular 1914 Session adopted Chapter 94 of the Acts of that year which submitted to the electorate of Kentucky an amendment to Section 171 of the Constitution. This proposed constitutional amendment met with the unqualified approval of both major political parties and was overwhelmingly approved by the voters of Kentucky at the polls. Notwithstanding the amendment was adopted in 1915, the administrative authorities realized the necessity of having a comprehensive tax program prepared and submitted to the Legislature prior to the enactment of any new tax laws. Accordingly, a special tax committee was appointed in 1916 to study the situa-

tion and to submit a comprehensive tax program. *Of the many problems that this commission had to face, none was more serious than the situation that existed with reference to the taxation of bank deposits and credits generally.* The State Tax Commission had found that bank deposits bore a State and local rate of approximately $2.65 per $100.00 valuation. The effect of such a high tax rate is at once obvious. A savings account in Kentucky on which the Bank paid interest at the rate of 3% was taxed at the rate of 2.65%. There was a substantial amount of money on deposit in Kentucky on which no interest was received and which, under the existing statutes and under Section 171, prior to its being amended, was taxed at the same rate as other property which was productive of substantial income. No one in Kentucky could afford to keep money on deposit in the State or to permit it to be on deposit in the State on July 1st, the day on which the assessment is made. Honest citizens, prompted by self-preservation, became tax dodgers, or at least they conveniently arranged to close their bank deposits prior to tax day. A general and widespread policy of tax evasion existed. Multiplied millions of dollars were withdrawn from Kentucky banks just prior to July 1st and much of this money was never returned or redeposited in Kentucky banks. The tax officials were helpless. There was no method by which they could locate and tax this money after it had been withdrawn from the banks.

After thoroughly canvassing the situation the Special Tax Commission of 1916 made its report to the

Governor of Kentucky. Following the receipt of this report Honorable A. O. Stanley, the Governor of Kentucky, on February 3, 1917, issued a proclamation convening the Legislature into special session for the purpose of considering the passage of new revenue and tax legislation. This Legislature convened in extraordinary session at the seat of government on February 11, 1917. Governor Stanley delivered a message before the Senate and House of Representatives of the Kentucky Legislature in which he made a thorough review of the then existing tax system and of the changes and new laws that should be enacted. It will be helpful to the Court to have before it these remarks and we attach as an appendix hereto the statements made upon that occasion. In the course of his remarks Governor Stanley advised the Legislature that:

> "The imperative need of immediate and radical tax reform has long been felt, and such legislation as you are now assembled to enact, repeatedly demanded by the people of this Commonwealth.
>
> "To that end the Constitution has been amended that your powers might be enlarged and that you be offered every opportunity to give to Kentucky a just, progressive and modern taxing system, a system equitably distributing the burdens of taxation, embracing every character of property—tangible and intangible. The Constitution as amended, permits the adoption of such methods as will enable you the more readily to reach, for purposes of taxation, property now practically exempt, and I have every reason to believe that when you have placed upon the tax rolls hundreds of

millions of such hidden and intangible property that the needed revenue for the proper maintenance of the State Government may be secured, while at the same time materially lightening the present burden upon agricultural lands which hitherto have borne a manifestly inequitable share of taxation."

(Senate Journal of 1917, pages 14-15.)

After referring to the recent amendment to Section 171 of the Kentucky Constitution Governor Stanley said:

"The purpose of this provision was twofold. First: By imposing a rate collectible without being confiscatory, to force from hiding hundreds of millions invested in foreign stocks and bonds, notes, mortgages, and accounts, now practically omitted from assessment; and Second: In that way to relieve visible holdings—agricultural lands especially—from a disproportionate and grossly inequitable share of the tax burden of the State."

(Senate Journal of 1917, page 15.)

The Legislature of 1917 remained in session from February 14th to April 25, 1917, and devoted its full time to revenue and tax problems. It was at this session that the bank deposits classification Act, now challenged by appellant, was enacted.

**(a) The Statutes of Kentucky Which Are Here Challenged.**

The Legislature of 1917, in enacting what it conceived to be a comprehensive tax program provided by Chapter 11, page 44 of the Acts of 1917, compiled as Section 4019a-10, Carroll's Kentucky Statutes, Baldwin's 1930 Revision, at pages 2052 and 2053, that:

> "All property subject to taxation for State purposes shall be subject also to taxation in the county, city, school or other taxing district in which same has a taxable situs, except the following classes of property *which shall be subject to taxation for State purposes only*: * * * (4) Money on hand, notes, bonds, accounts and other credits, whether secured by mortgage, pledge or otherwise, or unsecured, and shares of stock; provided, however, that nothing in this section shall forbid local taxation of franchises of corporations or of the shares of banks, trust companies or combined banks and trust companies doing business in Kentucky, or domestic life insurance companies. * * *" (Italics ours.)

The 1917 Legislature then enacted Chapter 11, page 44 of the Acts of 1917, compiled as Section 4019, Carroll's Kentucky Statutes, Baldwin's 1930 Revision, wherein they provided an ad valorem tax rate. That section is as follows:

> "An annual ad valorem tax for state purposes of thirty cents (30c) upon each one hundred dollars ($100.00) of value of all real estate directed

to be assessed for taxation, as provided by law *and fifty cents (50c) upon each one hundred dollars ($100.00) of value of all other property directed to be assessed for taxation, as provided by law, shall be paid by the owner, person or corporation assessed;* except a tax at the rate of one-tenth of one per cent (0.1%) shall be paid annually upon the amount of deposits in any bank, trust company, or combined bank and trust company, organized under the laws of this State, or in any national bank of this State, as now provided by law; and also except building and loan associations incorporated under the laws of this State, and making loans to members only, which associations shall be assessed except as otherwise provided by law in the manner and at the rate now set forth in chapter 14 of the acts of extraordinary session of general assembly of 1917. (Sections 4019a-6, 4019a-7 and 4019a-8.) * * *" (Italics ours.)

Not only did this 1917 Legislature provide in this section (Kentucky Statutes 4019) that monies on deposit in any bank, trust company or combined bank and trust company, organized under the laws of this State, or in any national bank of this State should be taxed at the rate of 1/10th of 1% but they also enacted a separate Act in which they provided the procedure that should be followed in reporting these deposits for taxation. *The banks were required to report the deposit and pay the tax as agent for the depositor.*

The domestic bank deposits Act of 1917 appears as Chapter 4 of the Acts of 1917 and is compiled as Sections 4019a-1, 4019a-2, 4019a-3, 4019a-4, Carroll's Ken-

tucky Statutes, pages 2049 and 2050, Baldwin's 1930 Revision. An examination of this bank deposits tax Act will demonstrate how fully and how carefully the Legislature dealt with the problem of taxing bank deposits in order that a maximum yield of revenue might be obtained therefrom. This Act in its entirety is as follows:

"Sec. 4019a-1. TAX ON BANK DEPOSITS.—Every person, firm or corporation having, on the first day of July, a deposit in any bank, trust company, or combined bank and trust company, organized under the laws of this state, or in any national bank of this state, shall pay a tax to the state which is hereby assessed at the rate of one-tenth of one per cent annually, upon the amount of such deposit so held by such bank on the first day of July, and no deduction therefrom should be made on account of any indebtedness. *The taxes imposed by this section shall be paid by such bank, trust company, or combined bank and trust company, or national bank, for and on behalf, and as the agent of the depositor therein to the auditor on or before the first day of September next following the date whereon the report provided for in Sec. 4019a-3 of this act.* (May 2, 1917, c. 4, p. 27, Sec. 1, as amended 1924, c. 116, p. 402.) This section referred to in K. S., Sec. 4019a-7. (Italics ours.)

"Sec. 4019a-2. NO OTHER TAX ASSESSED.—No other tax shall be assessed on such deposits in bank or against the depositor of said deposits by the state or any county, city, town or other district. (1917, c. 4, p. 27, Sec. 2.) This section referred to in K. S., Sec. 4019a-8.

"Sec. 4019a-3. BANKS TO REPORT AND PAY TAX ON DEPOSITS.—Each bank, trust company, or combined bank and trust company and national bank doing business in this state, shall file on or before the twenty-first day of July in each year, with the state tax commission, a report setting forth the total amount of its deposits as of July first of each year, which would be taxable in the name of the depositor, but excluding therefrom such deposits as are not taxable against the depositor under the laws of this state, and shall, on or before the first day of September of each year, pay to the auditor one-tenth of one per cent of the amount of such deposits, and may charge to and deduct from the deposit of each depositor the amount of the tax so paid for and on his behalf, and a lien as of July first of each year is hereby given to the banks and trust companies so paying the tax on the funds belonging to each depositor, respectively, on July first of each year on which the tax shall be so paid by them.

"Any claim for taxes against the depositor charged to or otherwise asserted against him by the bank paying the taxes shall be so charged or asserted within six months after the payment of the taxes to the auditor, and all claims, demands or lien therefor shall be thereafter barred. (May 2, 1917, c. 4, p. 27, Sec. 3, as amended March 4, 1924, c. 116, p. 402.) This section referred to in K. S., Sec. 4019a-1.

"Sec. 4019a-4. PENALTY FOR FAILURE TO REPORT.—Each bank and trust company that wilfully fails to make the returns, or to pay the taxes for and on behalf of its depositors provided for and in this act, shall forfeit an amount equal to one-tenth

of one per cent (1%) of such deposits to the use of the state for each month's delay in filing such return or in paying such tax. Such tax and forfeitures may be recovered in an action on this statute commenced by any county attorney in the county court of the county in which such bank or trust company may be located, but if the tax commission, or the court wherein such action is heard for the recovery of such acts, or forfeitures, becomes satisfied that such failure was not wilful, said tax commission or said court may, in its discretion, waive any part or all of such penalty. (1917, c. 4, p. 27, Sec. 4.)"

(1) LEGISLATIVE HISTORY OF STATUTES HERE CHALLENGED.

It should be noted that this Act levying a tax of 10c per $100.00 valuation on deposits in banks doing business in Kentucky was introduced on February 14, 1917, the first day that the special Legislature was in session (House Journal of 1917, page 14). It was considered by the House of Representatives and the Senate of Kentucky on numerous occasions, public hearings were held thereon and both in the House and in the Senate amendments were offered to the Bill. After the Bill had passed the House and had been received by the Senate certain amendments were there proposed and adopted and the Bill was then returned to the lower house for concurrence in the amendments. They agreed to certain of these Senate amendments but as to other amendments they refused to concur. A deadlock having been reached, a conference committee was appointed by both branches of the Legislature and fol-

lowing a meeting of these Committees the conference committee of the Senate recommended to the Senate that they recede from certain amendments. After the Senate had accepted the recommendation of its conference committee and receded from certain amendments the Bill was finally passed on April 18, 1917 (For history of Bill see House Journal of 1917, pages 14, 28, 39, 49, 59, 65, 269, 271-278, 590, 630, 675, 719, 720. Also see Senate Journal of 1917, pages 104, 174-175, 269, 270, 297, 298 and 338).

It is clear that this Bill received the deliberate consideration of both Houses of the Legislature (See *Stebbins* v. *Riley*, 268 U. S. 137, 143).

We have brought to the attention of the Court these various sections of the statutes of Kentucky imposing taxes because it is important that the Court should have before it all of the statutes operating upon the subject-matter, as was suggested by Mr. Justice Brandeis in Louisville Gas & Electric Company v. Coleman, 277 U. S. 32.

(2) STATISTICS SHOWING ACCOMPLISHMENT OF OBJECTIVES.

The objectives that the Legislature sought to accomplish by this Act have been accomplished beyond peradventure of doubt. Kentucky has received far more revenue under the Act taxing deposits in domestic banks at 10c per $100.00 valuation than it did during the many years prior to 1917 when the combined State and local rate was approximately $2.65 on each $100.00 valuation. In a bulletin of the Bureau

of Business Research of the College of Commerce of the University of Kentucky dated June, 1929, Volume 1, No. 1, prepared by the Honorable Simeon E. Leland, we find a study of the tax yield on bank deposits and credits in Kentucky for the period prior to 1917 and the period between 1917 and 1927. At page 14 of that report we find:

> "The assessment of cash on deposit in banks increased from $5,468,856.00 in 1895 to $11,277,196.00 in 1917. The adequacy of these assessments may be checked by data as to bank deposits, published annually by the Comptroller of Currency. In 1895 the deposits in State, national and private banks in Kentucky aggregated $37,324,445.00 (Report of Comptroller of Currency, Vol. 1). *The assessment of cash on deposit in banks was therefore but 14.65 per cent of the actual deposits. * * * The per capita assessment of money on deposit for the State as a whole was $2.55 in 1895, while the per capita deposits amounted to $17.38. In 1917 the total individual deposits subject to check in all reporting banks in Kentucky amounted to $198,560,000. The assessment of this property was thus but 5.68 per cent of the actual deposits, so that in spite of the 106.21% increase in assessments since 1895 a smaller percentage of bank deposits was being reached in 1917 than in 1895. The per capita assessment of deposits in 1917 was $4.67 while the per capital deposits amounted to $82.16.*" (The assessments under the new law being shown under tax reports for the year 1918 and following years.)

In contrast with the foregoing figures we turn to the vast amount of bank deposits that was brought out of hiding by the equitable tax laws enacted in 1917. THE 1917 ACT IN SO FAR AS IT DEALT WITH DEPOSITS IN BANKS, TRUST COMPANIES, WHETHER ORGANIZED IN KENTUCKY OR NATIONAL BANKS, INTRODUCED FOR THE FIRST TIME IN KENTUCKY A NEW THEORY OR PRACTICE IN AD VALOREM TAXATION, AND THAT WAS *THE TAXATION OF PROPERTY AT THE SOURCE.* Under this system the depositor in the Kentucky bank did not have anything to do with the listing for taxation of his deposit. The bank was required to report the amount of deposits on tax day (July 1st of each year), to pay the tax as the agent of the depositor—the authority being given to collect the money back from its depositors, and they were further given a lien on the deposits to protect them in the payments thus made. That this innovation in the field of taxation in Kentucky was a wise choice is demonstrated by the following comparison:

In 1916 $10,235,946.00 was assessed under the head of bank deposits in Kentucky. In 1917 $11,277,196.00 was assessed as bank deposits for taxation. *The first year that the classification statute was in force and effect, being 1918, bank deposits were reported for assessment in the amount of $179,143,180.00. Thus in one year the new law operated to bring approximately $168,000,000 in bank deposits out of hiding.* Two years later, in 1920, bank deposits were assessed at $260,919,320. Five years thereafter, in 1925, $341,035,080

was the amount of bank deposits reported for taxation. (Compiled from reports of the Kentucky State Tax Commission.) We have appended as a part of this brief excerpts from table 14 of a bulletin of the College of Commerce of the University of Kentucky, June, 1929, showing the assessment of bank deposits tax in Kentucky.

With this background before the Court of the history of the taxation of intangibles generally and bank deposits and credits specifically, we pass to a consideration of the objections raised by appellant.

## ARGUMENT.

### (a) Appellant's Contentions.

The entire case of the appellant is predicated upon the proposition that the Legislature of Kentucky in taxing deposits of Kentuckians in domestic banks at a rate more favorable than the taxation of other intangibles of Kentuckians, including monies on deposit outside of Kentucky, violated the equality and uniformity provisions of the 14th Amendment to the Constitution of the United States and that this action of the Kentucky Legislature operated to deprive appellant of his liberty and property without due process of law and that it further deprived him of his privileges and immunities as a citizen of the United States. The question for determination, therefore, is whether Kentucky in the adoption of the comprehensive system of taxation that it now has and the machinery which

was set up in 1917 exceeded its sovereign powers as a State and whether it has violated the aforementioned provisions of the 14th Amendment.

It is conceded that Kentucky now has by virtue of Section 171 of its Constitution the power to classify property for state taxation. The Court of Appeals of Kentucky, the highest Court of this State, in *Williams* v. *City of Bowling Green,* 254 Ky. 11, declared:

> "There is no provision of our Constitution that fixes a different standard from that prescribed by the equal protection clause of the 14th Amendment to the Constitution of the United States."

**(b) The State Has a Broad Discretion in the Classifying of Property for Taxation.**

The power to classify is undisputed, and the sole question is whether the classification is a proper one. This Court has often written that all that the "equal protection of the laws" requires is that all in the same class shall be treated alike. The rules governing the propriety and impropriety of a classification appear to be well settled; however, the application of these rules to a particular set of facts is not always an easy matter. Exact equality in the operation of a tax law is not required and in many instances is impossible. It has often been said that: "The power of the state to classify for purposes of taxation is of wide range and flexibility." The rule with reference to the powers of the state to classify has recently been stated in *Lawrence* v. *State Tax Commission of the State of*

*Mississippi*, 286 U. S. 276, in the course of which Mr. Justice Stone, writing for the Court, said:

> "The Federal Constitution imposes on the states no particular mode of taxation and apart from the specific grant to the Federal Government of the exclusive power to levy certain limited classes of taxes and to regulate interstate and foreign commerce, it leaves the states unrestricted in their power to tax those domiciled within them, so long as the tax imposed is upon property within the state or on privileges enjoyed there, and is not so palpably arbitrary or unreasonable as to infringe the 14th Amendment."

In the very recent decision of this Court in *New York Rapid Transit Corporation* v. *New York*, 303 U. S. 573, Mr. Justice Reed, writing for the Court, has this to say with reference to the powers of the States in connection with the classification of property for taxation:

> "No question is or could be made by the corporation as to the right of a state or a municipality with properly delegated powers, to enact laws or ordinances, based on reasonable classification of the objects of the legislation or of the persons whom it affects. Equal protection does not prohibit this. Although the wide discretion as to classification retained by a legislature often results in narrow distinctions, these distinctions if reasonably related to the object of the legislation are sufficient to justify the classification. (Cases cited.) Indeed it has long been the law under the 14th Amendment that a distinction in legislation

> is not arbitrary 'if any state of facts reasonably can be conceived that would sustain it, * * *'."

Further in the course of the same opinion Mr. Justice Reed says:

> "The power to make distinctions exists with full vigor in the field of taxation, where no 'iron rule' of equality has ever been enforced upon the states."

With these rules to guide us we pass on to a consideration of the factual situation confronting the Legislature as a result of which it decided to deal differently with the taxation of money on deposit in banks situated in Kentucky than in the taxation of other types of intangibles. What reasons could have prompted the Kentucky Legislature in taxing these domestic bank deposits at a lower rate? In response it might be said, and with abundant reason, that money on deposit in Kentucky banks occupies a far different status for purposes of taxation than any other kind of property. It occupies a different status because it is that type of property that is—(a) assessed at one hundred cents on the dollar, without there being any fluctuation in value. (b) The taxpayer has no opportunity to avoid the taxes that are imposed on this type of property and is required to do nothing toward placing this property on the tax rolls. (c) This property is placed upon the tax rolls and the taxes are collected by the State without the expenditure of any money for administrative expense other than the operation of a

central office for the Department of Revenue. (d) The State has the authority, both through its Revenue Department and Banking Division, to audit and check the banks in Kentucky and to ascertain whether a full disclosure of deposits is being made and taxes paid thereon. These considerations could reasonably have prompted the Legislature to have treated domestic deposits differently than other types of intangible property.

Kentucky has not undertaken to place an unusual burden upon money deposited in banks outside of Kentucky. Foreign bank deposits are classified by the Kentucky Legislature and are treated with the same consideration and taxed at the same rate as all other intangible property. THE EXISTENCE OF WHICH MUST BE DISCLOSED BY THE TAXPAYER BY HIS ASSESSMENT FILED WITH THE COUNTY TAX COMMISSIONER. A failure on the part of the taxpayer to disclose the ownership of cash on hand, stocks in a foreign corporation not doing business in Kentucky, monies in a lock box, accounts or credits due from Kentuckians or nonresidents of Kentucky, or monies on deposit in banks outside of this State, could not be checked by the State and probably would be omitted from the tax rolls. There is no way for Kentucky to ascertain how much money a Kentuckian has in his pocket on a given date, how much money is owing to him by persons residing either in or outside of Kentucky, how much money he may have in a lock box either in or outside of Kentucky, how much money he may have on deposit in a bank outside

of Kentucky. These are all facts within the personal knowledge of the taxpayer. He may disclose his ownership of them on tax day by reporting their existence to the tax assessor or he may not. *All of this class of intangible property is taxed uniformly at the rate of 50c on each $100.00 valuation.*

It becomes apparent that there was a sound reason for domestic deposits being taxed at the lower rate, and this would operate to meet the requirements announced in the many decisions of this Court and recently reannounced in the *New York Rapid Transit Company* case, *supra*, wherein it was said:

> "Indeed, it has long been the law under the 14th Amendment that a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it. * * *"

What else could the Legislature have had in mind in adopting this classification? Kentucky had found before it revised its tax laws in 1917 that its banks had not sustained the same growth as had banks in other States. Let us assume that a Kentucky taxpayer had $10,000 on deposit in the bank forty-eight hours prior to tax day. By leaving it in a Kentucky bank under the old system he would have been taxed at the rate of approximately $2.65 per $100.00 valuation. If he did not report it for taxation and the State happened to check the bank he would not only have been caught as a tax dodger but would also have had penalties inflicted upon him for the omission. Another Kentuckian having $10,000 on deposit in the same bank

withdraws his deposit prior to tax day and deposits it in a bank in another State beyond the reach of the Kentucky taxing authorities. He fails to report it for taxation. The Kentucky taxing officials have no authority to conduct an examination of the books of the nonresident bank for the purpose of ascertaining whether Kentuckians have or have not deposits therein. Under the old system it was found that millions of dollars were withdrawn from Kentucky banks during the closing days in August just prior to tax day. (The Legislature subsequently changed the tax day to July.) The effect of this large withdrawal of money from Kentucky banks served to weaken their internal structure and as a result reduced by a substantial amount the money that was available for loans in the community. In the months of July and August when crops are moving it was found that there was a great demand for credit and yet the banks, because of the large withdrawals, had available for the financial needs of the community less money than at any other time in the year. The effect of this system not only weakened the banks of Kentucky but great hardship resulted upon the farmers and the industrialists and it was felt throughout the State. Had not something been done Kentucky banking institutions in Kentucky would have been ultimately destroyed or at least their progress would have been materially retarded.

Could not the Legislature have also had in mind the public welfare of the people throughout the State and a desire to improve their economic conditions and to strengthen their banks by making the tax laws of

Kentucky so equitable that no Kentuckian, even in the thought of "self preservation" would withdraw his money from the banks on tax day. The Court of Appeals of Kentucky in its decision in this case, being reported in 265 Ky. 684, found "that there was a corresponding contraction in the assets of the banks at a time when crops were moving, and an increase rather than a decrease, in credit was necessary. In order to meet this economic situation, as well as the practical exigencies of taxation, a rate was fixed sufficiently low to encourage the building up of deposits on the tax date, and the banks were required to report and pay the tax on this species of property as agents of their depositors."

These reasons and many others, could well have justified the Kentucky Legislature in adopting the classification that it did. Experience since 1917 has sustained the wisdom of their action. This is the first case in which the classification has been attacked, notwithstanding the Act was adopted in 1917, and it is interesting to note that the Act is challenged by one who through the years 1924 to 1929 failed to disclose to the taxing authorities of Kentucky his ownership of this class of property and who if he had lived for many years would not have been caught by the State taxing authorities and his property would have gone untaxed. The wisdom of the classification is sustained by a consideration of the Kentuckian who placed his money in Kentucky banks and whose deposit was reported for taxation by the bank as his agent and the

Kentuckian who placed his money in foreign banks and who, like the appellant, kept it in hiding on tax day.

A Vermont statute taxing bank deposits was sustained by this court in *Clement National Bank* v. *Vermont*, 231 U. S. 120. The Vermont Act provided for the taxation of interest bearing deposits in national banks. The plaintiff in error challenged the constitutionality of the Act upon the ground that it was discriminatory and in violation of the equal protection clause of the 14th Amendment. THE ACT WAS SUSTAINED, and in so holding the Court said:

> "* * *; and, in the present case there is no basis for the contention that the statute unfairly discriminates against national banks unless it may be found in the method of dealing with deposits in banking institutions organized under the State law."

In reviewing the State law applicable to State banks the Court found that there was no discrimination and held that the State had not exceeded its powers in providing for the taxation of these deposits in national banks. With reference to the objection raised by plaintiff in error that it was not authorized to enter into an agreement with the State to report and pay the tax thus levied on these deposits the Court said:

> "It cannot be doubted that the property being taxable, the State could provide, in order to secure the collection of a valid tax upon such credits,

for garnishment and trustee process against the bank, *or in effect constitute the bank its agent to collect the tax from the individual depositors.* (Cases cited.) Further, it would seem to be highly appropriate that, the credits of depositors being taxable by the State, the bank should be free to make reasonable agreements and thus promote the convenience of its business, with respect to the making of returns and the payment of such amounts as the State might lawfully require of its depositors. Provision for such agreements, instead of constituting an interference with the Federal instrumentality, would aid it in performing its functions, and would remove unnecessary obstacles to the successful prosecution of its business."

This is a full answer to many of the objections raised by appellant to the Kentucky Act.

**(c) Facility of Collection.**

The widespread evasion of taxation under the old method is well stated in the opinion of the Court of Appeals of Kentucky in the case at bar. The Court found that under the old general property tax, out of $123,000,000 of bank deposits in the State, only $12,847,868,—or a little over 10%—was returned for taxation. The Court said:

"It was likewise a matter of general information that a large part of the money on deposit in banks went into hiding on the tax date."

By the passage of the new Act, Kentucky effectively stopped this widespread tax evasion with the resultant increase in the amount of revenue recovered into the State Treasury.

It is generally accepted by taxing authorities that the best method of tax collection is to tax the property at the source. Bank deposits is the ideal type of property to which the practice of "taxing at the source" can be successfully applied. The problem of administering the bank deposits tax is simplified and the administrative expense is almost nil. A comparison of the problems and expense of collecting the tax on deposits in domestic banks from Kentuckians and the collection of deposits in out-of-State banks from residents of Kentucky will quickly demonstrate the desirability of the one plan as against the other. Under the Act taxing money on deposit in Kentucky banks the bank fills out a report showing the amount of money that is due on its total deposits and at a specified time covers the same into the State Treasury. No taxing officials is required to assist in the filling out of the report, the bank receives no commission for effecting this collection for the State and no commission is paid to any official on the money thus collected, notwithstanding large sums are annually covered into the State Treasury from this source. With the collection of taxes on other types of intangibles such as money in a lock box, money on hand, money on deposit in banks outside the State, a great volume of administrative detail is required and a substantial amount of expense is incurred. In connection with this type

of tax the taxpayer must first appear before the County Tax Commissioner and file a written report on which he is supposed to set out the different types of property that he owns. This report clears through the Department of Revenue of the Commonwealth of Kentucky at various stages in connection with the assessment and collection; it comes into the possession of the County Court Clerk of the county of the residence of the taxpayer; and eventually a tax bill is placed in the hands of the Sheriff who by law is designated as the collecting officer. After the money has been collected by the Sheriff he through the procedure provided by law covers the same into the State Treasury. Thus we see that in addition to the amount of work and the problems of administration that falls upon these taxing officials and administrative officers, commissions on the amount of taxes assessed and collected are paid to the County Tax Commissioner and the Sheriff and in addition thereto there are fees to which the County Court Clerk becomes entitled. It is also necessary for a large staff to be maintained in the central offices of the Department of Revenue to check and certify the various assessments and reports. Where property is taxed at the source the system is conspicuous by the lack of expense, the certainty of collection and the absence of administrative problems. The appellant, however, questions the right of a State to justify classification on the basis of convenience in collection. Kentucky in adopting the classification in question not only had in mind the increased revenue that it would receive but also the low cost of col-

lection and the convenience of administration that would follow, together with the improvement of the economic conditions of the State by reason of this equitable distribution of the tax burden.

Thus far we have considered the actual problems, the practical problems that Kentucky was called upon to solve. That it had a right to proceed in the manner that it did is sustained by the many previous decisions of this Court. We shall briefly refer to and quote from prior decisions of this Court sustaining the action taken by Kentucky.

In *Watson, et al.*, v. *State Comptroller of New York*, 254 U. S. 122, in discussing a tax law of the State of New York Mr. Justice Brandeis, writing for the Court, had this to say:

> "Whether the investments of a resident are taxed during his life depends either upon his own will or upon the vigilence and discretion of the local assessors. This condition led to loss of revenue by the State and to inequality in taxation among its citizens. To remedy both evils this additional transfer tax was imposed upon investments of a decedent that had wholly escaped taxation. * * * Any classification is permissible which has a reasonable relation to some permitted end of governmental action. It is not necessary, as the plaintiff-in-error seems to contend, that the basis of the classification must be deducible from the nature of the things classified—here the right to receive property by devolution. *It is enough, for instance, if the classification is reasonably founded in 'the purposes and policy of taxation.'*" (Italics ours.)

The classification here attacked was unquestionably founded in "the purposes and policy of taxation" and in order to bring into the State Treasury huge sums of money representing taxes on property which had hitherto remained untaxed.

We turn to a consideration of *Carmichael* v. *Southern Coal & Coke Company*, 301 U. S. 495. This case involved the constitutionality of the Alabama Unemployment Compensation Act. In upholding its constitutionality the Court, in an opinion written by Mr. Justice Stone, has this to say:

> "* * * It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it.
>
> "This restriction upon the judicial function, in passing on the constitutionality of statutes, is not artificial or irrational. A State Legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the consideration which move its members to enact laws. In the absence of such a record courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function."

The appellant contended in the lower court and here contends, that the Legislature was not authorized to consider the convenience in collection as a basis for classification. This Court in the case of Carmichael v. Southern Coal & Coke Company, *supra*, discussed that specific question and said:

> "*Administrative convenience and expense in the collection or measurement of the tax are alone a sufficient justification for the difference between the treatment of small incomes or small taxpayers and that meted out to others* (cases cited). We cannot say that the expense and inconvenience of collecting the tax from small employers would not be disproportionate to the revenue obtained. For it cannot be assumed that the Legislature could not rightly have concluded that generally the number of employees bears a relationship to the size of the pay-roll and therefore to the amount of the tax, and that the large number of small employers and the paucity of their records of employment would entail greater inconvenience in the collection and verification of the tax than in the case of large employers.
>
> "*It would hardly be contended that the State, in order to tax payrolls, is bound to assume to administrative cost and burden of taxing all employers having a single employee. But if for that or any other reason it may exempt some, whether it should draw the line at one, two, three or seven, is peculiarly a question for legislative decision. The decision cannot be said to be arbitrary because it falls in the twilight zone between those members of the class which plainly can and those who plainly cannot expediently be taxed.* * * *

*In no case do appellees sustain the burden which rests upon them of showing that there are no differences, between the exempt employers and the industrial employers who are taxed, sufficient to justify differences in taxation.*" (Italics ours.)

Convenience and practical problems in the enforcement of laws, particularly the collection of revenue, is a consideration that confronts every taxing body in the preparation of laws that are submitted to the legislature for passage.

In *People of the State of New York ex rel Hatch* v. *Reardon*, 204 U. S. 152, there was involved the constitutionality of a New York act placing a tax of 2c per $100.00 of the par value on transfers of corporate shares. In upholding this act this Court said:

"Stamp acts necessarily are confined to certain classes of transactions, and to classes which, considered economically or from the legal or other possible points of view, are not very different from other classes that escape. You cannot have a stamp act without something that can be stamped conveniently. *And it is easy to contend that justice and equality cannot be measured by the convenience of the taxing power. Yet the economists do not condemn stamp acts and neither does the Constitution.*" (Italics ours.)

Again, in *Otis & Grasman* v. *Parker*, 187 U. S. 606, a provision of the California Constitution declaring void all contracts for the sale of shares of the capital stock of any corporation or association on margin was

called in question. The provision was upheld and in so doing it was said:

> "Considerable latitude must be allowed for differences of view, as well as for possible peculiar conditions which this court can know but imperfectly, if at all. Otherwise a constitution, instead of embodying only relatively fundamental rules of right, as generally understood by all English-speaking communities, would become the partisan of a particular set of ethical or economical opinions, which by no means are held *semper ubique et ab omnibus.*"

Further in the course of the same opinion we find:

> "Even if the provision before us should seem to us not to have been justified by the circumstances locally existing in California at the time when it was passed, it is shown by its adoption to have expressed a deep-seated conviction on the part of the people concerned as to what that policy required. Such a deep-seated conviction is entitled to great respect. If the state thinks that an admitted evil cannot be prevented except by prohibiting a calling or transaction not in itself necessarily objectionable, the courts cannot interfere, unless, in looking at the substance of the matter, they can see that it 'is a clear, unmistakable infringement or rights secured by the fundamental law.' * * * We cannot say that treating stocks of corporations as a class subject to special restrictions was unjust discrimination or the denial of the equal protection of the laws."

It is recognized by this Court in *New York Rapid Transit Company* v. *New York, supra,* in an opinion written for the Court by Mr. Justice Reed, that administrative convenience in the collection and verification of the tax might properly be taken into account by the State's legislature. Kentucky having learned as the result of loss of revenue over the many years prior to 1917 that a new system was necessary in its treatment of monies on deposit in Kentucky banks, adopted a system which to the tax authorities and the legislature seemed a proper one, and that was the placing of a low rate of taxation on bank deposits and collecting this low rate at the source. That in so doing it did not violate any provision of the Constitution of the United States seems to us to be clear from the opinions of this Court.

**(d) Promotion of the General Welfare.**

This Court has repeatedly sustained legislation which in addition to the raising of revenue tended to promote the general welfare of the people of a State. It cannot be successfully contradicted that the enactment of the present classification perhaps contributed more to the welfare of the people of Kentucky than any classification of property for tax purposes made within the past quarter of a century. This legislation, among other things, resulted in the placing for the first time of the banks of Kentucky upon a firm financial basis whereby without fear of a large amount of withdrawals around tax day they were free to make

loans throughout the State, to encourage industrial expansion, to facilitate the buying of homes, to relieve distressed debtors who in a period of temporary financial distress were required to procure their loans from loan sharks at exorbitant rates of interest.

It cannot be questioned that because of the large accumulations in Kentucky banks since the passage of this legislation interest rates have been reduced to a point where they are at present as low if not lower than at any other time in the history of the State. Not only have the citizens been benefited by the banks having substantial sums of money available for loans, but the Federal, the State, the County and the City governments have likewise benefited from this wise tax policy. In the portfolio of every large banking institution can be found substantial holdings in bonds that have been issued both by the Federal and State government, and also new sources of credit have become available to the minor political subdivisions. It would have been impossible for the banks to have loaned their money to the government at a low interest rate if they were confronted with the problem that they faced prior to 1917—that on or about tax day there would be large withdrawals by their depositors.

The Court is not required to speculate or to conjecture as to the reasons that the Kentucky legislature had in adopting this classification. The reasons are recorded. They are found in the reports of the Special Tax Commission filed prior to the passage of the act, and when we turn to the address delivered by Governor Stanley to the 1917 Legislature, and which ad-

dress is made a part of the House and Senate Journal of that session, all doubts as to why the legislature adopted the classification disappear. It has often been written in the opinions of this Court that a presumption of validity attaches to the acts of a legislature. It has further been the policy of this Court when scrutinizing a classification act to sustain distinctions made provided they are not arbitrary and unreasonable and if any state of facts reasonably can be conceived that would sustain the action taken by the State Legislature the existence of that state of facts at the time the law was enacted must be presumed. See *Carmichael* v. *Southern Coal & Coke Company, supra; Rast* v. *Van Deman & Lewis Company,* 240 U. S. 342; *Clarke* v. *Deckebach,* 274 U. S. 392; *Stebbins, et al.,* v. *Riley, State Controller,* 268 U. S. 137; *New York Rapid Transit Company* v. *New York, supra.*

This Court has in many tax cases arising from the various States declined to hold classifications unconstitutional which could conceivably have borne some relation to a lawful legislative policy, even though the Legislature did not declare either in a preamble to or in the body of the act a purpose other than the raising of revenue. A large number of statutes have been upheld having as their sole declared purpose the raising of revenue, where this Court found that the Legislature had a further and unexpressed intent to assist and to promote the advancement of the public welfare. Is the Kentucky act to meet the condemnation of this Court because in addition to providing effective machinery for the collection of a substantial amount of

new revenue it also resulted in promoting the economic interest of its people? This Court has as early as 1898, in People of the State of New York v. Roberts, 171 U. S. 658, sustained a State classification tax statute where it was able to perceive an unexpressed desire to encourage industry in that State. In many of the cases previously considered by this Court in which the economic advancement of the State was offered as the basis for the classification there was not present the further, and possibly the more important fact, that increased revenue would also result to the State. The Kentucky act not only increases the amount of revenue that Kentucky will receive but also promotes its industrial development.

The case of *Colgate v. Harvey*, 296 U. S. 404, decisively refutes the position here assumed by appellant. It authorizes a consideration of the general welfare and of the economic advancement of the people of the State in passing upon a classification statute. In the course of that opinion Mr. Justice Sutherland, writing for the Court, said:

> "If the statute had provided that interest on account of money so loaned when invested in property having a situs within the state shall be free from taxation a different question as to classification might be presented. In that event the actual wealth of the state would be increased and in addition, and as a consequence, opportunity to obtain additional revenue through taxation would result."

In *Citizens Telephone Company* v. *Fuller,* 229 U. S. 322, this Court upheld the constitutionality of a Michigan statute which imposed a tax on telephone and telegraph companies, which statute in part provided that:

> "The property of the telephone and telegraph companies whose gross receipts within this state for the year ending June 30th does not exceed $500.00 shall be exempt from taxation."

In arriving at that conclusion this Court considered the public service that was rendered by such a company and found that the exempted companies were in the nature of cooperative enterprises where there was little or no profit, whereas the taxed companies were commercial enterprises. This Court, on page 329 of that opinion, stated:

> "It may, therefore, be said that in taxation there is a broader power of classification than in some other exercise of legislation. There is certainly as great a power."

Again, in *Merchants and Manufacturers Bank* v. *Pennsylvania,* 167 U. S. 461, this Court in upholding a Pennsylvania statute which was attacked upon the ground that the classification was arbitrary said:

> "But this lack of uniformity in the result furnishes no ground of complaint under the Federal Constitution. Suppose for any fair reason affecting only its internal affairs the state should see fit to wholly exempt certain named corporations

from all taxation. Of course, the indirect result would be that all other property might have to pay a little larger rate per cent in order to raise the revenue necessary for the carrying on of the State Government, but this would not invalidate the tax on other property, or give any right to challenge the law as obnoxious to the provisions of the Federal Constitution."

In *Rast* v. *Van Deman & Lewis Company*, 240 U. S. 342, this Court said:

"It is the duty and function of the legislature to discern and correct evils, and by evils we do not mean some definite injury but obstacles to a greater public welfare."

In *American Sugar Refining Company* v. *Louisiana*, 179 U. S. 89, the Court upheld a Louisiana statute which imposed a tax on those engaged in the business of refining sugar, but exempted from the tax planters grinding and refining their own sugar and molasses. In so holding the Court said:

"The Act in question does undoubtedly discriminate in favor of a certain class of refiners, but this discrimination if founded upon a reasonable distinction in principle, is valid."

In *Metropolis Theatre Company* v. *Chicago*, 228 U. S. 61, in upholding the constitutionality of an ordinance of the City of Chicago requiring licenses for places of amusement and which divided the places of amusement into twenty-one classes and fixed the li-

cense fee on the basis of the price of admission and not the seating capacity of a theatre, the Court said:

> "To be able to find fault with a law is not to demonstrate its invalidity. It may seem unjust and oppressive yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical it may be and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercise which can be declared void under the 14th Amendment."

In *Acro Mayflower Transit Company* v. *Georgia Public Service Commission*, 295 U. S. 285, the Court upheld the constitutionality of a Georgia Statute which exempted from the annual license tax on private carriers by motor vehicles certain vehicles engaged in hauling passengers or farm products between points not having railroad facilities, and also exempted those engaged exclusively in the transportation of agricultural or dairy products. In sustaining this classification the Court, speaking through Mr. Justice Cardozo, said:

> "We think a classification thus designed to ameliorate the lot of producers of farm and dairy products is not an arbitrary preference within the meaning and condemnation of the 14th Amendment. The plight of the Georgia farmer has been

pictured by the State court in words already quoted. To free him of fresh burdens might seem a wise statecraft, to be a means whereby to foster agriculture and promote the common good. * * *"

Further in the course of the same opinion it is said:

"Be that as it may, exemption from a tax stands upon a different footing, although the purpose of the tax is the upkeep of the highway. At such times the legislature may go far in apportioning and classifying to the end that public burdens may be distributed in accordance with its own conception of policy and justice. *If its action be not arbitrary, the courts will stand aloof.*" (Italics ours.)

That the consideration of local, domestic and industrial problems are important factors in the drafting and adoption of statutes having for their declared purpose the raising of revenue is so well settled by the decisions of this Court as to preclude further debate.

In *A. Magnano Company* v. *Hamilton*, 292 U. S. 40. this Court sustained a tax statute wherein a distinction for tax purposes was found between the retail sale of butter and oleomargarine and the one was taxed and the other was not. Also, see *Alaska Fish Salting and By-Products Company* v. *Smith*, 255 U. S. 44. wherein a classification was sustained based upon the difference between herring and salmon offal.

It is contended at some length by appellant that this effort on the part of Kentucky to tax money on

deposit in Kentucky banks at the 10c rate while taxing monies on deposit in banks outside of Kentucky at a 50c rate constitutes an unlawful and arbitrary discrimination in that its purpose and effect is to throw a burden if not a prohibition on dealings or activities of a commercial nature outside of Kentucky. The appellant is treated no differently in connection with money deposited by him in banks outside of Kentucky than he is on loans made to individuals or corporations within or without the State. Had he loaned his money to a Kentucky or New York industrial company, a Kentucky or New York farmer or a Kentucky or New York merchant instead of to the New York bank, he would have been taxed at exactly the same 50c per $100.00 rate. The claim of an unjustifiable, unreasonable, arbitrary discrimination is unequivocally refuted by a reference to Section 4019a-1, Kentucky Statutes, *which taxes all intangible property at the rate of 50c per $100.00 with the two exceptions therein named.*

In *Southwestern Oil Company* v. *Texas*, 217 U. S. 114, this Court upheld the constitutionality of an Act of the Texas Legislature imposing a license tax upon all wholesale dealers in specified articles but which levied no tax on the occupation of other wholesale dealers in other products. In sustaining the classification it was said:

> "What were the special reasons or motives inducing the State to adopt the classification of which the oil company complains *we do not certainly know. Nor is it important that we should*

*certainly know.* It may be that the main purpose of the State was to encourage retail dealing in the particular articles mentioned in Section 9. If the statute had its origin in such a view, we do not perceive that this court can deny the power of the State to proceed on that ground. * * * It is sufficient for the disposition of this case to say that, except as restrained by its own Constitution, or by the Constitution of the United States, the State of Texas, by its Legislature, has full power to prescribe any system of taxation which in its judgment is best or necessary for its people and government; that, so far as the power of the United States is concerned, the State has the right, by any rule it deems proper, to classify persons or businesses for the purposes of taxation, subject to the condition that such classification shall not be in violation of the Constitution of the United States; that the requirement by the State, that all wholesale dealers in specified articles shall pay a tax of a given amount on their occupation, without exacting a similar tax on the occupations of wholesale dealers in other articles, cannot, on the face of the statute or by reason of any facts within the judicial knowledge of the court, be held, within the meaning of the Fourteenth Amendment, to deprive the taxpayer of his property without due process of law, or to deny him the equal protection of the laws; and that the Federal court cannot interfere with the enforcement of the statute simply because it may disapprove its terms, or question the wisdom of its enactment, or because it cannot be sure as to the precise reasons inducing the State to enact it." (Italics ours.)

In *Armour & Company* v. *Virginia*, 246 U. S. 1, the constitutionality of an act of Virginia was involved which levied a license tax on all persons or corporations carrying on a merchandise business at any place in the State but which contained a provision excluding from the operation of the license tax manufacturers who offer for sale at the place of manufacture goods, wares and merchandise manufactured by them. The record disclosed that Armour & Company, a New Jersey corporation, was selling manufactured merchandise in Virginia which had been manufactured by the selling corporation in other States and shipped into Virginia for sale. Armour & Company challenged the constitutionality of the act on the ground, among others, that the statute discriminated against them to the extent that its merchandise, although similar to that of others, was taxed merely because it had been made in one State and the other merchandise in another. (A far stronger argument in connection with interstate activity than the present case.) In upholding the action taken by the Virginia Legislature this Court said:

> "It was held (in the court below) that the statute was inherently within the State Legislative power and that the difference between a manufacturer selling goods by him made at the place where manufactured and one engaged in a mercantile business, even if his business consisted in whole or in part of the selling of goods by him manufactured at a place other than the place of manufacture was such as to afford adequate ground for their distinct classification and hence

justified the provision of the statute including one in the merchants license and excluding the other."

It is readily apparent that Virginia by the passage of this Act was attempting to encourage the location of factories, with the resulting increase of employment for its citizens and increased taxes from the manufactories thus established.

Again, in the case of *People of the State of New York* v. *Roberts*, 171 U. S. 658, it appeared that the Parke-Davis Company, a Michigan corporation with its factory in Michigan, had a warehouse and store for the sale of its products in the City of New York. It complained of a New York statute which it said subjected it to a tax from which were exempted other corporations, foreign and domestic, which manufactured the same class of goods within the State of New York, and that such a tax constituted an unjust discrimination against the corporation whose place of manufacture was in Michigan. In upholding the Act the Court said:

"It will be perceived that the tax is prescribed as well for New York corporations as for those of other States. It is true that manufacturing or mining corporations wholly engaged in carrying on manufacturing or mining ores within the State of New York are exempt from this tax; but such exemption is not restricted to New York corporations but includes corporations of other states as well, when wholly engaged in manufacturing within the State."

In the very recent case of *Connecticut General Life Insurance Company* v. *Johnson*, 303 U. S. 77, Mr. Justice Black, in the course of a dissent, had this to say:

> "It may be true that California believes that by this tax it can stimulate the reinsurance business of companies making their reinsurance contracts in California. The right of a State to foster its own domestic industries by its taxing system has been sustained."

It is, therefore, submitted that Kentucky in the passage of this Act has not invaded any rights guaranteed to this appellant or to any other citizen of Kentucky or citizen of the United States by the equality, the uniformity or the due process clause of the 14th Amendment of the Constitution of the United States. Any inequality that may result to this appellant, any discrimination that he may feel that he is being subjected to, is a natural result of the operation of a comprehensive, equitable, constitutional tax system.

### (e) Appellant's Contentions Not Sustained by Colgate v. Harvey, *Supra*.

The appellant apparently has based his entire case on the idea that the Kentucky Statute is analogous to the Vermont Statute involved in the litigation that reached this Court in the case of Colgate v. Harvey, *supra*, and that the conclusions therein arrived at sustain the position here asserted by appellant. A close analysis of that case indicates a substantial dif-

ference between it and the case at bar. The majority opinion in the Colgate case recognized that it was "settled beyond the admissibility of further inquiry, that the equal protection clause of the 14th Amendment does not preclude the States from resorting to classification for the purpose of taxation," and it is further stated that:

> "The power of a state to classify for purpose of taxation is of wide range and flexibility."

In that case it was pointed out that the only test afforded by the Vermont Statute was that the money should be loaned within the State at a rate of interest not exceeding 5% in order to support the classification. It is then said:

> "If the statute had provided that interest on account of money so loaned when invested in property having a situs within the state shall be free from the tax, a different question as to classification might be presented. In that event the actual wealth of the state would be increased, and in addition, and as a consequence, opportunity to obtain additional revenue through taxation would result."

The Kentucky Statute on its face affords a most reasonable basis for the classification. Bank deposits of Kentuckians in Kentucky banks are taxed at the source. The report is made by the bank, the payment is made by the bank as the agent of the depositor. No affirmative action is required to be taken by the tax-

payer in order that the State may realize its taxes. This is a class that has been set up by the Legislature and all persons within that class are taxed uniformly Other classes such as the owners of credits from private individuals, from non-banking corporations within Kentucky, from banking corporations without Kentucky, are required, like the owners of tangible and real property, to make the listings themselves. Their property is not taxed at the source. Whether the State receives taxes on this type of property depends to a large extent upon the honesty and integrity of the taxpayer in making a full disclosure. The State, to a large extent, is at the mercy of the taxpayer. It was at the mercy of the appellant in this action and the appellant chose not to disclose the ownership of the property which the State ascertained the existence of following his death through inheritance tax reports. The evils which the State attempted to render unprofitable are demonstrated by the conduct of appellant.

On that phase of the Colgate opinion in which the Court disclosed that a different question might have been presented had it appeared that the loans so exempted would be invested in the State and that the actual wealth of the State might be increased, the Kentucky Act and the history of its passage shows that the Legislature of Kentucky had in mind exactly the same considerations as this Court expressed in the Colgate opinion. It was fully aware of the importance, the desirability, the necessity of stimulating financial activities within Kentucky and the building of strong

banks. The part that a strong banking system plays in promoting the general welfare of the State has recently been expressed by the highest Court of Kentucky in the case of *Reynolds Metal Company* v. *Martin*, 269 Ky. 378, 107 S. W. (2d) 251 at 261, wherein it was said:

> "Banks now perform the function of supporting to a very large degree government credit not only national, but state, county, and municipal as well so absolutely essential if these governments are to carry on as they are compelled to carry on under the strain and stress of economic and social duties imposed and assumed in these strenuous and changing times. It is because of this that both state and national governments have encouraged, if not forced, easy money conditions to the end that the government in its need for credit may not be put in sharp competition with private requirements for funds. In all legislative halls is stressed the necessity of low interest rates in order that the vast debtor population may work itself out of its debtor situation and further, in order that industry by the employment of funds at low interest rates may be encouraged into renewed activity and employment thereby be given to the many now unemployed, and that a larger share of the proceeds of industry may go to labor, industry not having to bear such heavy interest charges."

Kentucky has accomplished what it sought to accomplish and which this Court suggested might be proper in the Colgate opinion. It has made a proper

classification, it has brought large sums of money out of hiding, it has substantially reduced tax evasion, it has increased the tax receipts of the State, credit has expanded, deposits in Kentucky banks have progressively increased. These considerations cannot be refuted. They are supported by the written opinion of the Court of Appeals, Kentucky highest Court, on the trial of the case at bar and from whose judgment this appeal has been proseeuted. In the opinion of the Court of Appeals in this case, being reported as Commonwealth v. Madden's Executor, 265 Ky. 684, the statements made by the Court of Appeals are convincing. It said:

> "In the case at bar there is an obvious public purpose to be subserved and an obvious *quid pro quo* to be received by the state from its local banks as distinguished from non-resident banks. There is no way of guaranteeing that deposits in banks of other states will be reported for taxation by those banks or that the tax will be paid by such banks and charged to the account of the depositor, as is the case with local banks. Similarly, there is no public reason for seeking to build up the deposits in non-resident banks on the taxing date, and consequently no reason why the deposits in non-resident banks should be accorded a privilege not granted to other credits generally. There is no 'clear and hostile discrimination' embodied in Section 4019a-1 directed against deposits in non-resident banks. Any discrimination that exists is merely incidental to a legitimate classification, and results simply from the lack of power in the state to reach banks beyond its jurisdiction, and

from the absence of the sound economic reasons which justify the classification when applied to domestic banks but which fail when extended beyond the boundaries of the state. A non-resident who deposits his money in a Kentucky bank, and permits it to acquire a taxable situs here, is accorded the same favorable rate that is fixed on the deposit of a resident of this state. If a resident of this state chooses to place his funds in a foreign bank he, in effect, himself selects the classification of his property for taxation. Metropolis Theatre Company v. Chicago, 288 U. S. 61. We can find in these facts no denial of equal protection nor any abridgement of privileges and immunities."

We submit that the Kentucky Act fully conforms to the standard pronounced in the majority opinion of this Court in the Colgate case. Both the statutes and the factual situation in the two cases are different, and upon a showing of the considerations here enumerated, the opinion of Mr. Justice Sutherland in Colgate v. Harvey indicates a different conclusion would have been reached.

The dissenting opinion of Mr. Justice Stone in the Colgate case is a complete refutation of the position here asserted by appellant. In the course of that dissent it was said:

"* * * Legislative acts must be taken to be based on facts which support their constitutional validity unless the contrary reasonably appears."

Again it is said:

> "If the purpose of exemption appears to be to encourage the lending of money within Vermont by its residents at low rates of interest, and if it appears reasonably calculated to have that effect, and as we cannot say that such loans will not be of benefit to the state by tending to establish the interest rate of 5% or less, and by stimulating loans to borrowers for the purpose of carrying on business and industries within the state, the conclusion seems inescapable that the equal protection clause does not forbid it."

**(f) Kentucky's System of Taxing Property for *Ad Valorem* Purposes Does Not Abridge Any Privilege or Immunity Guaranteed to Appellant by the Fourteenth Amendment.**

The Statutes of Kentucky levying ad valorem taxes on the various classes of property subject to assessment in Kentucky operate uniformly and do not impose any greater burden on intangible property owned by Kentuckians and used in connection with activities in other States than it does upon intangible property used within the State. Notwithstanding the long line of decisions of this Court and the highest Court of Kentucky placing broad powers in the State Legislatures in enacting classifications, the State Constitution not providing otherwise, the result that would necessarily follow if appellant's contention is found to be meritorious would be a restriction, if not a total elimination, of the power of classification in the adop-

tion of tax statutes and a discarding of the principle announced in *Bell's Gap Railroad Company* v. *Pennsylvania*, 134 U. S. 232, that the States are not bound by "The iron rule of equality of taxation."

The Kentucky taxing statute is challenged as violating those privileges and immunities guaranteed to appellant as a citizen of the United States by the Fourteenth Amendment. It is incumbent upon a litigant invoking the privileges and immunities clause of the Fourteenth Amendment in challenging State legislation to establish, First: that he is a citizen of the United States (it is admitted that Mr. Madden was during the taxing years involved in this litigation a citizen of the United States); Second: a showing of a violation of the clause by the invasion of a right accruing to that litigant by the Constitution of the United States or the Federal Statutes. What are the privileges and immunities that are guaranteed to a citizen of the United States? This Court has said on repeated occasions that: "The privileges or immunities of citizens, protected by the Fourteenth Amendment against abridgement by State laws, are not those fundamental privileges and immunities inherent in State citizenship, but only those which owe their existence to the Federal Government, its national character, its constitution or its laws." *Prudential Insurance Company of America* v. *Cheek*, 259 U. S. 530. Does this record show—has the appellant pointed out—any provision of the Constitution of the United States or any statute enacted by Congress guaranteeing to him

any privilege or immunity which Kentucky seeks to violate.

The argument here made is similar to that advanced to this Court in the *Slaughter House Cases,* 16 Wall. 36, 21 L. Ed. 394. Since the argument there asserted is akin to that offered here by appellant a brief analysis of that case is in order.

THE SLAUGHTER HOUSE CASES.

The Louisiana Legislature created a corporation and conferred upon it the exclusive privilege, for a term of four years, of establishing and maintaining within a certain part of New Orleans stock yards and slaughter houses. Provision was made in the Act for the use of these facilities by others for a prescribed price and the landing for slaughter or the slaughtering of animals elsewhere or otherwise was forbidden. A system of inspection was also provided for. Suits were brought challenging the constitutionality of the Act by persons operating an independent business who, by reason of the Act, were driven out of business. Among other objections advanced it was urged "That the statute abridged the privileges and immunities of the plaintiffs in error as citizens of the United States, and the particular privilege which was alleged to be violated was that of pursuing freely their chosen trade, business, or calling." (Substantially the same objection that appellant makes in the case at bar.)

The Court in sustaining the constitutionality of the Act placed its conclusion in part "Upon the broad

ground that the right asserted in the case was not a privilege or immunity belonging to persons by virtue of their national citizenship, but, if existing at all, belonging to them only by virtue of their State citizenship." The majority opinion was written for this Court by Mr. Justice Miller, in which he said: "It is quite clear, then, that there is a citizenship of the United States and a citizenship of a State, which are distinct from each other and which depend upon different characteristics or circumstances in the individual." He then described the privileges and immunities of State citizenship as defined by Mr. Justice Washington in *Corfield* v. *Coryell*, 4 Wash. CC 371, Fed. Cas. No. 3, 230, in the following language: "Those rights which are fundamental," to embrace "Nearly every civil right for the establishment and protection of which organized government is instituted," and "To be the class of rights which the State governments were created to establish and secure."

It was concluded by the Court that the civil rights theretofore appertaining to citizenship of the States and under protection of the States were not given the security of national protection by this clause of the Fourteenth Amendment. On this phase of the case the Court held that the rights relied upon are those which belong to the citizens of States, as such, and are under the sole care and protection of the State government. There was a dissenting opinion filed in that case by Mr. Justice Field, concurred in by other Justices, in which it was urged that the fundamental rights of citizenship, which by the opinion of the Court, were

held to be rights of State citizenship, protected only by the State government, became, as a result of the Fourteenth Amendment, rights of national citizenship, protected by the National Constitution. (The invasion claim in the instant case is predicated upon a similar argument.)

Since the rendition of the opinion in the Slaughter House Cases, *supra,* this Court has consistently refused to sustain an argument based upon the privileges and immunities clause attacking the constitutionality of State legislation in the absence of a showing of a violation of a right, privilege or immunity which was inherent to national citizenship.

The doctrine of State rights has been so thoroughly dealt with by this Court and the rules governing the application of the privileges and immunities clause so extensively embedded into the jurisprudence of this Nation that we shall not encroach upon the time of this Court with a detailed elaboration.

This Court has consistently declined to interpret the privileges and immunities clause as authorizing it to supervise the relationship between a State and her citizens. Representative of the consistency to which this Court has adhered to its interpretation expressed in the Slaughter House Cases of the privileges and immunities clause, we point to the following as a few of the many decisions of the Court.

In *Twining* v. *State of New Jersey,* 211 U. S. 78, the Court declared that the exemption from self-incrimination is not safeguarded as against State action by the provisions of the Fourteenth Amendment and that al-

though exemption from self-incrimination is secured as against Federal action by the Fifth Amendment, it is not one of the fundamental privileges of national citizenship, which the States are forbidden by the Fourteenth Amendment to abridge.

In *Williams* v. *Fears*, 179 U. S. 270, the Georgia Legislature, in enacting a State occupational tax, provided for a tax upon those engaged in hiring laborers for employment outside of Georgia. Notwithstanding laborers were left free to make their own contracts, this Court declared that such a provision did not abridge or infringe the privileges and immunities clause. It was urged in that case as it is urged here, that the provision of the Georgia Act violates the privilege and immunities clause because it restricts the right of the citizen to move from one State to another, and so abridges his privileges and immunities. The Court in rejecting the argument and while conceding that a citizen has "The right to remove from one place to another according to an inclination," and further that a citizen has the "Right to contract," said:

> "But this act is a taxing act, by the second section of which taxes are levied on occupations, including, by Paragraph 10 the occupation of hiring persons to labor elsewhere. If it can be said to effect the freedom of egress from the State, or the freedom of contract, it is only incidentally and remotely. The individual laborer is left free to come and go at pleasure and to make such contracts as he chooses, while those whose business it is to induce persons to enter into labor contracts

and to change their location, though left free to contract, are subject to taxation in respect of their business as other citizens are."

Further the Court announced:

"And for the further reason that the State could properly discriminate in its police and fiscal legislation between occupations of similar nature, but of dissimilar tendency; between those which tended to induce the laboring population to leave, and those which tended to induce that population to remain."

The sustaining of this plea of the invasion of the privileges and immunities clause would result in a renunciation of the construction heretofore given the clause. Ours is a dual system of government. Rights are inherent by reason of State citizenship and certain rights are guaranteed to citizens of the United States. Those "Fundamental" rights, those "Natural law" rights are an attribute of State citizenship and have never been conceived by the opinions of this Court to be an attribute of United States citizenship.

The adopting of appellant's contention would result in a diminution of the authority and independence of the States and their legislative and judicial acts would then be subject to judicial review by the National government. This was the question that was fought out and in which a precedent was established by the Slaughter House Cases decision.

Appellant refers to and quotes from *Colgate* v. *Harvey, supra,* as being a case in point. The facts before

the Court in that case and the facts now before the Court are entirely different. The Vermont Act was declared invalid in that case upon a finding that it was unlawfully discriminatory and violated both the equal protection and the privilege and immunity clauses of the Fourteenth Amendment. In writing the majority opinion for the Court, Mr. Justice Sutherland said:

> "If the statute had provided that interest on account of money so loaned when invested in property having a situs within the State shall be free from the tax, a different question as to classification might be presented. In that event the actual wealth of the State would be increased, and in addition, and a consequence, opportunity to obtain additional revenue through taxation would result."

The Kentucky Act contains the purposes that the majority opinion failed to find in the Vermont Act. If the Court in the Colgate case, *supra,* had been inclined to invalidate the Vermont Act on the charge that it violated the privileges and immunities clause it would have been unnecessary for Mr. Justice Sutherland to have declared that if it had been shown that the interest on account of money so loaned when invested in property having a situs within the State shall be free from the tax, a different question would have been presented. These facts even if they had been contained in the body of the Act, even if they had appeared affirmatively in the record would not have validated the statute if it had run counter to the privileges and immunities clause.

We therefore submit that the Colgate case has no application to this one. The appellant has failed to bring to the attention of this Court the invasion of any privilege or immunity guaranteed to him by the privileges or immunities clause of the Fourteenth Amendment. Any inequality that may result to him by reason of his having placed money on deposit in foreign banks is not a basis for an attack upon the Kentucky Act. This appellant, like all other creditors except depositors in Kentucky banks, is taxed at one and the same rate. Like all other persons similarly situated and circumstanced he is taxed at the rate applicable to that class. In the exercise of its power to classify, the State has set up a classification into which appellant has not brought himself. This is no basis of complaint. Appellant had the choice of lending his money to whomever he desired. He elected to place it in foreign banks. He effected his own classification.

## CONCLUSION.

The principle involved in this appeal is important to Kentucky and to the other States and it is for this reason that we have endeavored to fully present the problems that Kentucky and the other States must face in the adoption of adequate systems of taxation. The theory of taxing property at the source is comparatively new in the field of ad valorem taxation and its efficiency as a tax producer has been demonstrated beyond question. If the theory of taxing property at the source is a sound one (experience has so proven

it in Kentucky) the opinion in this case will sustain the right of Kentucky and other States to fully utilize this principle. Experience has shown that taxing a certain type of property at the source results in more property being placed on the tax rolls than does a system under which property is placed upon the tax rolls only by a disclosure in the form of a tax report by the taxpayer. Certainly a taxing authority is authorized to make its tax system as attractive and as economical as it can. If this were not so there would be little if any basis for the power to classify and yet the Courts are in full agreement, the Constitutions of the States permitting, that States may adopt proper classifications. What more reasonable, more sensible, more rational basis can be found for a tax classification than one which taxes property at its source and which in a period of two years places on the tax rolls of the State $168,000,000 property heretofore concealed from taxation? This is what the tax classification in Kentucky accomplished between the years 1916 and 1918. In 1916, under the system of taxing all property at the same rate, without the power to classify, $10,238,846 was assessed as bank deposits. Two years later, under the new system, we find bank deposits assessed $179,143,180. It would require long research to find a classification of property for purposes of taxation which has redounded to the public welfare of the State in a more pronounced fashion than has the classification here attacked. For more than twenty years its uniform administration has contributed to the public welfare of the State in many ways. By every test laid

down by this Court the classification is valid. It is not arbitrary or capricious. It is not invidious. It is founded in the wisdom and policy of taxation. The judgment of the Kentucky Court of Appeals should be affirmed.

Respectfully submitted,

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# APPENDIX

*Gentlemen of the Senate and House of Representatives:*

Previous Legislatures have generously provided for many things, good and laudable in themselves, for the improvement and enlargement of penal and eleemosynary institutions, for the pensioning of aged and dependent Confederate veterans, for a more liberal compensation for Circuit Judges, for the preservation of forests, for the cure and prevention of contagious diseases and for other purposes. It is to be regretted, however, that at the time these appropriations were authorized, no adequate provision was made for the necessary increase in revenue necessary to meet them. As a result, more than three-fourths of the revenues of the State are absorbed by fixed appropriations which cannot be curtailed by one dollar.

No human ingenuity, no possible economy can, under existing conditions, over which the Administration has no control, bring the necessary expenses of the State Government, however economically administered, within its current revenues.

This necessary and inevitable deficit is temporarily provided for, by the issuance of warrants having no fixed date of maturity and bearing a high rate of interest. At this date, such outstanding warrants amount to $3,773,715.02. The fact that such warrants cannot be funded by legislative enactment under the Constitution of this State, is conclusive evidence of the purpose of the framers of that instrument—that the General Assembly should provide a revenue adequate to meet, without such deficit, all expenses incident to the proper conduct of the State Government at the time they are incurred.

The present taxing system of the State is not only grossly inadequate for the purposes for which it was designed—in the language of the admirable report of the

Tax Commission now before you: "There is no adequate method of forcing all property on the assessment roll, no adequate method of determining or fixing the proper taxable value, when the same is listed, and no adequate means for equalizing or equitably distributing the burden of taxation."

The imperative need of immediate and radical tax reform has long been felt, and such legislation as you are now assembled to enact, repeatedly demanded by the people of this Commonwealth.

To that end the Constitution has been amended that your powers might be enlarged and that you be offered every opportunity to give to Kentucky a just, progressive and modern taxing system, a system equitably distributing the burdens of taxation, embracing every character of property—tangible and intangible. The Constitution as amended, permits the adoption of such methods, as will enable you the more readily to reach, for purposes of taxation, property now practically exempt, and I have every reason to believe that when you have placed upon the tax rolls hundreds of millions of such hidden and intangible property that the needed revenue for the proper maintenance of the State Government may be secured, while at the same time materially lightening the present burden upon agricultural lands which hitherto have borne a manifestly inequitable share of taxation.

The task of putting into effect the provisions of our amended Constitution may be difficult. It is, however, no new question, and a short review of the history of this legislation can leave in the minds of no unbiased citizen any doubt of the plain and imperative purpose of an overwhelming majority of the electors of Kentucky, that this work be done thoroughly and immediately.

By virtue of the recent amendment to which I have referred—

"The General Assembly shall have power to divide property into classes and to determine what class or classes of property shall be subject to local taxation."

The purpose of this provision was twofold.

First—By imposing a rate collectible without being confiscatory, to force from hiding hundreds of millions invested in foreign stocks and bonds, notes, mortgages, and accounts, now practically omitted from assessment; and,

Second—In that way to relieve visible holdings—agricultural lands especially—from a disproportionate and grossly inequitable share of the tax burden of the State.

No change in the organic law has been more exhaustively discussed or more thoroughly considered. On February the ninth, nineteen twelve, the proposed amendment passed the Senate by a vote of thirty-four to one. This amendment with an added referendum passed the House, March the first, by a vote of seventy-eight to three. Submitted to the voters at the November election, nineteen thirteen, it was adopted by a majority of thirty-three thousand five hundred, more than two to one of those voting favoring its adoption.

The Secretary of State having failed to comply with the provisions of the law governing the submission of such amendments, it was again introduced at the session of nineteen fourteen, passing the Senate, February the twenty-seventh, by a vote of twenty-nine to one, and the House, March the seventeenth, by a vote of seventy-two to sixteen.

This amendment being a second time submitted to the voters at the succeeding general election, was adopted by a majority of thirty-two thousand and twenty-seven.

Both political parties in their latest State conventions have expressed the fixed purpose of the people as unequivocally as the electors at the poles. Both parties by platform declaration favored immediate tax revision and the adoption of this amendment.

I congratulate the General Assembly that a part at least of the vital and difficult work before you has been done by able and diligent public servants who have given no little time and careful attention to the subject at hand.

On March the fifteenth, nineteen twelve, the Governor approved an act to "Investigate revenue and taxation in this State and recommend a plan for the revision thereof." The Tax Commission of nineteen twelve made a voluminous report which contains much of interest to the student of this now vital question, whether you concur in all its findings or not.

Pursuant to a Joint Resolution of the late General Assembly, I appointed a Tax Commission consisting of three members of the Senate and four of the House, to serve without compensation, and charged with investigating conditions in this State and recommending a suitable and adequate revenue system.

After continued and extensive hearings and the most diligent and exhaustive study of this subject, this Commission has submitted its final report. That report is before you, and will, I trust, form the basis at least for the construction of a system of revenue and taxation which will foster new enterprises, will invite rather than repel the investment of capital in this, the richest of all fields for investment, and by a wise and just assessment, adequately provide the sorely needed revenue for the proper and successful conduct of the business of the State.

It is my earnest hope that the work of the Commission and of the General Assembly will prove a lasting boon to the people of this State, and an impetus to enterprise in every legitimate field of endeavor. In putting into effect your mandate it was my purpose that no small, no personal, no mere partisan consideration might mar the excellence of a task so large and so pregnant with good or ill to the whole people. It was my earnest desire in the selection of this honorable body, that it should be more than Bi-partisan, that it should in its efforts and aspiration be non-partisan. That no man and no section should be denied

a full and fair hearing. For that reason, this Commission is not Democratic or Republican, it is not urban or rural. Upon it are representatives of both parties, taken from the Mountains, the Blue Grass and the Purchase. During its deliberations, differences of opinion have been discussed without bitterness or the impugning of a colleague's motives, and in the end, I am happy to advise you, that they all heartily concur in the conclusions submitted for your consideration. Differing radically upon moral, social and political issues, they were selected because of my faith in their capacity, integrity and vivid appreciation of the importance of the duty assigned, and the nearness of the result of their labors to every citizen of the Commonwealth.

They were a unit upon one question, single in their fixed purpose to devise some adequate means by which intangible property, much of it in the hands of the rich, might be forced to bear its just proportion of taxation, from which it had been hitherto exempt, and that agricultural lands, now excessively burdened, might be in a measure relieved by a new and more equitable system.

I trust that, mindful of the meager fiscal resources of the State, you will most cheerfully endure a measure of inconvenience, that no day or hour may be wasted in bringing your work to a conclusion at the earliest moment consistent with the faithful performance of your duties. Had I consulted your convenience or my own, I should not have called you from your homes and business at this time. It is, however, incumbent upon the General Assembly and the Executive alike, that we render willing and instant obedience to the explicit, persistent and oft repeated demand of the sovereign citizens of the State, that you proceed with all possible celerity to carry into effect the mandate of the Constitution, and provide for this Commonwealth a modern, just and efficient system of revenue and taxation.

Respectfully submitted,

A. O. Stanley,
*Governor of Kentucky.*

Frankfort, February 14, 1917.

## TABLE XIV.

BULLETIN OF THE BUREAU OF BUSINESS RESEARCH, COLLEGE OF COMMERCE, UNIVERSITY OF KENTUCKY, LEXINGTON, KY.

Volume 1. June, 1929. Number 1.

Assessment, Rate and Yield of Bank Deposit Tax in Kentucky.*

| Year | Assessment of Bank Deposits |
|---|---|
| 1916 | $ 10,235,846 |
| 1917 | 11,277,196 |
| 1918 | 179,143,180 |
| 1919 | 209,363,034 |
| 1920 | 260,919,320 |
| 1921 | 284,161,828 |
| 1922 | 270,121,440 |
| 1923 | 272,201,630 |
| 1924 | 317,319,996 |
| 1925 | 341,035,080 |
| 1926 | 334,975,190 |
| 1927 | 349,146,540 |

*Rate and Yield Omitted.

p. 3

# SUPREME COURT OF THE UNITED STATES.

No. 92.—October Term, 1939.

John E. Madden, Jr., Executor of the Estate of John E. Madden, Deceased, Appellant,
vs.
Commonwealth of Kentucky, by H. Clyde Reeves, Commissioner of Revenue of the Commonwealth of Kentucky.

Appeal from the Court of Appeals of the Commonwealth of Kentucky.

[January 29, 1940.]

Mr. Justice Reed delivered the opinion of the Court.

This is an appeal[1] brought here under Section 237(a) of the Judicial Code from a judgment of the Court of Appeals of Kentucky sustaining the validity of a statute of that state against an attack by the appellant on the ground of its being repugnant to the due process, equal protection, and privileges and immunities clauses of the Fourteenth Amendment of the Constitution of the United States.

The issue is whether a state statute which imposes on its citizens an annual ad valorem tax on their deposits in banks outside of the state at the rate of fifty cents per hundred dollars and at the same time imposes on their deposits in banks located within the state a similar ad valorem tax at the rate of ten cents per hundred dollars is obnoxious to the stated clauses of the Fourteenth Amendment. The relevant provisions of the Kentucky statutes for the period in question appear in the note below.[2]

The opinion of the Court of Appeals of Kentucky in this case construes the exception in Section 4019, limiting the tax on bank deposits to one-tenth of one per cent, as applicable only to depositors in local financial institutions organized under the laws of Ken-

[1] See Act of January 31, 1928, 45 Stat. 54.

[2] Carroll's Kentucky Statutes, Baldwin Revision, 1930, §4019a-10, p. 2052 (Ky. Acts, 1924, Ch. 116, § 3) provides:

"All property subject to taxation for state purposes shall be subject also to taxation in the county, city, school, or other taxing district in which same

tucky or under the national banking laws. This interpretation of the state laws is of course accepted by us.[3]

John E. Madden died in November, 1929, a citizen and resident of Fayette County, Kentucky. On several prior assessment dates, July 1 in Kentucky, Mr. Madden had on deposit in New York banks a considerable amount of funds. These deposits had not been reported for the purposes of taxation in Kentucky. That state brought suit against Mr. Madden's executor to have these deposits assessed as omitted property and to recover an ad valorem tax of 50 cents per hundred dollars as of July 1 of each year, together with interest and penalties. The executor used as one defense against this claim the contention that a tax on deposits in banks outside of Kentucky at a higher rate than the tax upon bank deposits within Kentucky would abridge decedent's privileges and immunities as a citizen of the United States, deprive him of his property right and the liberty to keep money on deposit outside of Kentucky without due process of law, and deny to him equal protection of the law in violation of the Fourteenth Amendment. The Court of Appeals passed upon the constitutional questions submitted because of the difference in taxing rate between Kentucky deposits and out-of-state deposits. It approved the classification as permissible under the due process and equal protection clauses and refused to accept the argument that its interpretation of the statutes violated the privileges and immunities clause.

I. *Classification.*—The broad discretion as to classification possessed by a legislature in the field of taxation has long been recog-

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has a taxable situs, except the following classes of property which shall be subject to taxation for state purposes only:

"(4) Money in hand, notes, bonds, accounts and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and shares of stock; . . . ."

Carroll's Kentucky Statutes, Baldwin's Revision 1930, § 4019, p. 2048 (Ky. Acts 1924, Ch. 116, § 1, p. 402, as reenacted in Ky. Acts 1926, Ch. 164, p. 739), provides as follows:

"An annual ad valorem tax for state purposes of thirty cents (30¢) upon each one hundred dollars ($100.00) of value of all real estate directed to be assessed for taxation, as provided by law and fifty cents (50¢) upon each one hundred dollars ($100.00) of value of all other property directed to be assessed for taxation, as provided by law, shall be paid by the owner, person or corporation assessed; except a tax at the rate of one-tenth of one per cent (0.1%) [i. e., 10 cents upon each $100] shall be paid annually upon the amount of deposits in any bank, trust company, or combined bank and trust company, organized under the laws of this State, or in any national bank of this State as now provided by law; . . . ."

[3] St. Louis S. W. Ry. v. Arkansas, 235 U. S. 350, 362; Storaasli v. Minnesota, 283 U. S. 57, 62.

nized.[4] This Court fifty years ago concluded that "the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation,"[5] and the passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification.[6] Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes.[7] The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.[8]

Paying proper regard to the scope of a legislature's powers in these matters, the insubstantiality of ~~petitioner's~~ appellant's claim that he has been denied equal protection or due process of law by the classification is at once apparent. When these statutes were adopted in 1917 during a general revision of Kentucky's tax laws, the chief problem facing the legislature was the formulation of an enforceable system of intangible taxation.[9] By placing the duty of collection on local banks, the tax on local deposits was made almost self-enforcing. The tax on deposits outside the state, however, still resembled that on investments in *Watson* v. *State Comptroller*, the

[4] New York Rapid Transit Corp. v. New York, 303 U. S. 573, and cases there cited.

[5] Bell's Gap R. R. v. Pennsylvania, 134 U. S. 232, 237.

[6] Citizens' Telephone Co. v. Fuller, 229 U. S. 322, 329.

[7] See the opinion of Mr. Justice Brandeis in Louisville Gas & Electric Co. v. Coleman, 277 U. S. 32, 42, 46-47.

[8] Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 78-79.

[9] Because of a prohibition in the Kentucky Constitution of 1891 against classification in taxation, the state and its political subdivisions taxed intangibles at the same rate as other property. This resulted in a total tax of about $2.65 per hundred dollars on intangibles, a tax which in the case of bank deposits almost equaled the interest on deposits. The high rate led to widespread evasion of the tax by concealment of intangibles; with bank deposits this took the form of withdrawals for deposits outside the state. The unequal burden which this evasion placed on other forms of property led to agitation for reform as early as 1908. Two special tax commissions reported on the need for a constitutional amendment and a general tax reform. After an amendment permitting classification was adopted in 1916, a third committee

collection of which was said to depend "either upon [the taxpayer's] will or upon the vigilance and discretion of the local assessors."[10] Here as in the *Watson* case the classification may have been "founded in 'the purposes and policy of taxation.'" The treatment accorded the two kinds of deposits may have resulted from the differences in the difficulties and expenses of tax collection.[11]

II. *Privileges and Immunities.*—The appellant presses urgently upon us the argument that the privileges and immunities clause of the Fourteenth Amendment of the Constitution of the United States[12] forbids the enforcement by the Commonwealth of Kentucky of this enactment which imposes upon the testator taxes five times as great on money deposited in banks outside the State as it does on money of others deposited in banks within the State. The privilege or immunity which appellant contends is abridged is the right to carry on business beyond the lines of the State of his residence, a right claimed as appertaining to national citizenship.

There is no occasion to attempt again an exposition of the views of this Court as to the proper limitations of the privileges and immunities clause. There is a very recent discussion in *Hague* v. *C. I. O.*[13] The appellant purports to accept as sound the position stated as the view of all the justices concurring in the *Hague* decision. This position is that the privileges and immunities clause

made specific proposals for revision, and most of the recommendations were adopted at a special legislative session in 1917. See the message of Governor Stanley to the General Assembly of 1917, Kentucky Senate Journal of 1917, p. 13. In general the revision took the form of a drastic lowering of the rates on intangibles. An even lower rate was placed on bank deposits and almost complete collection assured by placing the duty of collection on the banks.

The studies which led to the general revision of 1917 may be found in Report of the Kentucky Tax Commission for 1909; Report of the Special Tax Commission of Kentucky for 1912-14; Report of the Kentucky Tax Commission for 1916. A careful examination of the workings of the revised system has been made by Dr. Simeon E. Leland. The Taxation of Intangibles in Kentucky, Bulletin of the Bureau of Business Research, College of Commerce, University of Kentucky, vol. 1, no. 1 (1929).

[10] 254 U. S. 122, 124.

[11] Carmichael v. Southern Coal & Coke Co., 301 U. S. 495, 511.

[12] The 14th Amendment, Section 1, provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . ."

[13] 307 U. S. 496. The prior cases are collected in Note 2 of the dissenting opinion in Colgate v. Harvey (296 U. S. 404, 445) and Note 1 of Mr. Justice Stone's opinion in the Hague case (307 U. S. 496, 520).

protects all citizens against abridgement by states of rights of national citizenship as distinct from the fundamental or natural rights inherent in state citizenship.[14] This Court declared in the *Slaughter-House Cases*[15] that the Fourteenth Amendment as well as the Thirteenth and Fifteenth were adopted to protect the negroes in their freedom. This almost contemporaneous interpretation extended the benefits of the privileges and immunities clause to other rights which are inherent in national citizenship but denied it to those which spring from state citizenship.[16] In applying this constitutional principle this Court has determined that the right to operate an independent slaughter-house,[17] to sell wine on terms of equality with grape growers[18] and to operate businesses free of state

[14] Mr. Justice Roberts' opinion, at p. 512: "Although it has been held that the Fourteenth Amendment created no rights in citizens of the United States, but merely secured existing rights against state abridgement, it is clear that the right peaceably to assemble and to discuss these topics, and to communicate respecting them, whether orally or in writing, is a privilege inherent in citizenship of the United States which the Amendment protects."

Mr. Justice Stone's opinion, at p. 519-21: "Hence there is no occasion . . . to revive the contention, rejected by this Court in the *Slaughter-House Cases*, that the privileges and immunities of United States citizenship, protected by that clause, extend beyond those which arise or grow out of the relationship of United States citizens to the national government.

"That such is the limited application of the privileges and immunities clause seems now to be conceded by my brethren."

[15] 16 Wall. 36, at 71-72:

"We repeat, then, in the light of this recapitulation of events, almost too recent to be called history, but which are familiar to us all; and on the most casual examination of the language of these amendments, no one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each, and without which none of them would have been even suggested; we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him. . . .

". . . . And so, if other rights are assailed by the States which properly and necessarily fall within the protection of these articles, that protection will apply though the party interested may not be of African descent. But what we do say, and what we wish to be understood, is, that in any fair and just construction of any section or phrase of these amendments, it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy, and the process of continued addition to the Constitution until that purpose was supposed to be accomplished, as far as constitutional law can accomplish it."

[16] *Idem* 78-79.

[17] Slaughter-House Cases, *supra*.

[18] Cox *v.* Texas, 202 U. S. 446; cf. Bartemeyer *v.* Iowa, 18 Wall. 129; Crowley *v.* Christensen, 137 U. S. 86; Giozza *v.* Tiernan, 148 U. S. 657; Crane *v.* Campbell, 245 U. S. 304.

regulation[19] were not privileges and immunities protected by the Fourteenth Amendment. And a state inheritance tax statute which limited exemptions to charitable corporations within the state was held not to infringe any right protected by the privileges and immunities clause.[20] The Court has consistently refused to list completely the rights which are covered by the clause, though it has pointed out the type of rights protected.[21] We think it quite clear that the right to carry out an incident to a trade, business or calling[22] such as the deposit of money in banks is not a privilege of national citizenship.

In the states, there reposes the sovereignty to manage their own affairs except only as the requirements of the Constitution otherwise provide. Within these constitutional limits the power of the state over taxation is plenary. An interpretation of the privileges and immunities clause which restricts the power of the states to manage their own fiscal affairs is a matter of gravest concern to them.[23] It is only the emphatic requirements of the Constitution which properly may lead the federal courts to such a conclusion.

Appellant relies upon *Colgate* v. *Harvey*[24] as a precedent to support his argument that the present statute is not within the limits of permissible classification and violates the privileges and immunities clause. In view of our conclusions, we look upon the decision in that case as repugnant to the line of reasoning adopted here. As a consequence, *Colgate* v. *Harvey* must be and is overruled.

*Affirmed.*

Mr. Chief Justice HUGHES concurs in the result upon the ground as stated by the Court of Appeals of Kentucky, that the classification adopted by the legislature rested upon a reasonable basis.

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19 Holden v. Hardy, 169 U. S. 366; Wilmington Star Mining Co. v. Fulton, 205 U. S. 60; Western Union Telegraph Co. v. Commercial Milling Co., 218 U. S. 406; Rosenthal v. New York, 226 U. S. 260; Prudential Ins. Co. v. Cheek, 259 U. S. 530.

20 Board of Education v. Illinois, 203 U. S. 553; cf. Ferry v. Spokane, P. & S. Ry., 258 U. S. 314.

21 They have been described as "privileges and immunities arising out of the nature and essential character of the national government, and granted or secured by the Constitution of the United States." In re Kemmler, 136 U. S. 436, 448. See also Slaughter-House Cases, *supra* at 79-80; United States v. Cruikshank, 92 U. S. 542, 552; Williams v. Fears, 179 U. S. 270, 274; Twining v. New Jersey, 211 U. S. 78, 97.

22 Cf. Twining v. New Jersey, 211 U. S. 78, 94.

23 Twining v. New Jersey, *supra*, 92.

24 296 U. S. 404.

# SUPREME COURT OF THE UNITED STATES.

No. 92.—October Term, 1939.

John E. Madden, Jr., Executor of the Estate of John E. Madden, Deceased, Appellant,
*vs.*
Commonwealth of Kentucky, by H. Clyde Reeves, Commissioner of Revenue.

Appeal from Kentucky Court of Appeals.

[January 29, 1940.]

Mr. Justice Roberts.

I think that the judgment should be reversed. Four years ago in *Colgate* v. *Harvey*, 296 U. S. 404, this court held that the equal protection clause and the privileges and immunities clause of the Fourteenth Amendment prohibit such a discrimination as results from the statute now under review. I adhere to the views expressed in the opinion of the court in that case, and think it should be followed in this.

Mr. Justice McReynolds joins in this opinion.